

**The European Union's IPA Program
For Western Balkans**

**Thematic Evaluation of Rule of
Law, Judicial Reform and Fight
against Corruption and
Organised Crime in the Western
Balkans – Lot 3
Service Contract Ref. No 2010/ 256 638**

Final Main Report

Beneficiary Countries:

Albania

Bosnia and Herzegovina

Croatia

Kosovo (*This designation is without prejudice to positions on status, and is in line with
UNSCR 1244 and the ICJ Opinion on the Kosovo Declaration of Independence*)

Former Yugoslav Republic of Macedonia

Montenegro

Serbia

February 2013



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MAIN REPORT

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Acronyms and Abbreviations

BiH	Bosnia and Herzegovina
CARDS	Community Assistance for Reconstruction, Development and Stabilisation
CMS	Case Management System
COM	Council of Ministers (BiH)
CSO	Civil Society Organisation
DEI	Directorate for EU Integration
DIS	Decentralised Implementation System
EC	European Commission
EP	European Partnership
EU	European Union
EUROJUST	European Union's Judicial Cooperation Unit
EUROPOL	European Police Office
FBiH	Federation of Bosnia and Herzegovina
FID	Financial Intelligence Department
FYR	Former Yugoslav Republic
GRECO	Group of States against Corruption (Council of Europe)
HJPC	High Judicial and Prosecutorial Council
ICT	Information and Communication Technology
ICTY	International Criminal Tribunal for the former Yugoslavia
IJC	Independent Judicial Council
IPA	Instrument for Pre-Accession Assistance
JSRS	Justice Sector Reform Strategy (BiH)
JPTC	Judicial and Prosecutorial Training Centre (BiH)
MIFF	Multi-annual Indicative Financial Framework
MIPD	Multi-Annual Indicative Planning Document
NGO	Non-Governmental Organisation
NIPAC	National IPA Coordinator
NIS	National Integrity System (Transparency International)
NP	National Programme
OECD	Organisation for Economic Cooperation and Development
OHR	Office of the High Representative
OSCE	Organisation for Security and Cooperation in Europe
NP	National Programme
RoL	Rule of Law
ROM	Results Oriented Monitoring
RS	Republika Srpska
SAA	Stabilisation and Association Agreement

SAP	Stabilisation and Association process
SIGMA	Support for Improvement in Governance and Management (OECD)
SIPA	State Investigation and Protection Agency
SMART	Specific, Measurable, Available, Relevant, Time-bound
SPO	Senior Programme Officer
TAIB	Transitional Assistance and Institution Building
TAIEX	Technical Assistance, Information and EXchange - EuropeAid
UNDP	United Nations Development Programme
UNODC	United Nations Organisation against Drugs and Crime

Executive Summary

This report presents the results from Lot 3 of the “*Thematic Evaluation of Rule of Law, Judicial Reform and Fight against Corruption and Organised Crime in the Western Balkans*”. The Overarching Objective is to provide operational recommendations for future IPA programming (“IPA II” covering the period 2014-2020) based on the findings from results in the region and other relevant experiences.

This Executive Summary is divided in six parts: (i) summary of findings from the review of the current IPA program period, (ii) a general overview of the findings and challenges based on the team’s field work, (iii), (iv) and (v) reviews of findings and conclusions regarding judicial reform, fight against corruption and fight against organised crime, respectively, and (vi) recommendations.

Lessons from IPA Support

This and the next section summarise the material from chapters 7.1 on the lessons from IPA programming and chapter 3.4 with respect to other experiences from the region:

- Regarding **Relevance** – the extent to which financial assistance addressed the priorities outlined in key enlargement strategic and policy documents – the *share* of IPA funding was fairly low given the importance accorded the rule of law issues, but the *trend* is towards increased allocations, with more earmarked funds for the fight against organised crime and corruption. Yet funding levels/ shares appear limited compared with the importance accorded these fields in EU strategic and policy documents, the severity of problems faced on the ground, the time that is required to produce visible and sustainable improvements in fields that are highly contentious yet represent the priority chapters 23 and 24 in the accession dialogue.
- Concerning **Efficiency** – how efficient the selection of interventions to address priorities is – the overarching structure of MIFF to MIPD to national programs to project fiche development is structured by cumbersome. Reducing the periodicity of MIPDs and moving towards more programme funding around sector objectives is a step in the right direction. Annual project identification and preparation cycles are still experienced as hectic, provide incentives for coming to closure quickly (in Bosnia they tried to address this by splitting the 2008 IPA into two programmes, for “quick” and “other” projects, but this was not helpful).
- Regarding **weaknesses** and **strengths** of EU assistance, the challenge has been local political will and ownership, and secondly local capacity to plan, implement, monitor and develop the activities over time. In most of the Western Balkans there is not strong political support for putting in place effective rule of law, anti-corruption and organised crime implementation.
- On the EU side, its clear commitment to the long-term relationship and support for local capacity development; its permanent presence with staff on the ground who are able to maintain both policy dialogue and project management oversight; the large-scale, continuous and predictable funding; the clear linkages to the accession process; the breadth and depth of its assistance programme in terms of sectors and actors; the ability to support and promote trans-border regional collaboration across most sectors; the depth of policy development, standards and partnerships; all make the EU a special political and financial partner. Its political agenda is transparent and spelled out in its various policy documents – all publicly available – as are the rules and regulations that surround the financial assistance. *Predictability* is thus very high – a valuable aspect in periods and situations of financial and political instability.

- The restructuring of fundamental frameworks – ***institutional development*** has been the most important and yielded the most sustainable results: new laws, restructured judicial and court system (high judicial councils etc.), new judicial philosophy represent the foundations for all subsequent rule of law work and capacity building. Because they are structural features they are not dependent on a continuous flow of resources, they are generally quite “visible” (laws, mandates, roles etc. are formalised, legislated, politically approved, ...) and need to follow open procedures to be changed. These procedures are generally open and known and not necessarily easy to manipulate and thus to some extent protected from “political capture”. Getting the tool kit in place is a pre-requisite for getting the work done.
- The ***sequencing*** of beginning with fundamental structures and then support the organisations required to implement new, revised or re-confirmed mandates makes sense since there is thus foreseen stability and predictability on what core responsibilities and competencies are to be. On the margin some changes could undoubtedly have been different, and in some cases large-scale changes – such as fairly big chunks of law passed at the same time – have taken place without actors being able to absorb and apply the new tools well. But during the numerous interviews held with a wide variety of stakeholders across the region, inappropriate phasing of reforms was not a concern but the lack of serious implementation of the reforms themselves
- Having the tools does not guarantee they will be used: the establishment of anti-corruption agencies was sometimes questioned as they may be so under-resourced they cannot work (the BiH agency for several years) or effectively curtailed by not having enforcement powers (such as in Serbia). However, once such an agency is in place, there is an identifiable body that can begin to be held accountable for implementing a formal mandate. If performance is not satisfactory, analyses of causes and proposals for remedies can then be identified – the first steps towards changes in actual results.
- In complex fields such as organisational development, the projects that have delivered positive results have tended to be long-term, with permanent resident committed advisory staff, such as the establishment of independent judiciary/prosecutorial councils and the vetting of judges/prosecutors. In fields that address *acquis* dimensions, having advisory services provided through a twinning agreement has usually been positive, both because of the relevance of the skills set being provided but also because the foreign institutional partner may contribute to the larger corporate culture of the beneficiary organisation.
- Short-term projects, organisations that are not able to attract and retain skilled staff and thus have high staff turn-over or are permanently under-staffed, projects where external technical advice is not appropriate or is not available to the project when it is needed, and bodies that are not able to establish necessary collaborative arrangements with complementary agencies usually do not produce useful results.
- The - at times heavy - investments in buildings and equipment have been questioned, but the European Court of Auditors (2009) notes that “*although not all investment projects achieved fully satisfactory results and the sustainability is at risk, the investment ... made a relevant and useful contribution to the national infrastructure*” (ibid p. 7). But while early rehabilitation and construction (especially in countries that had not had independent judiciaries previously) is understandable, the public coffers’ capacity for continuous operations and maintenance costs need to be paid more attention. The costly refurbishment of court rooms for upcoming war crimes cases in BiH raises the question if this will be cost-effective and sustainable over time.

- Defending and improving the independence and professionalism of core judicial institutions like Councils, court supervision bodies, supreme/constitutional courts is a continued pre-requisite for sustainability and impact of legal reforms.
- Predictable and sufficient funding is a key pre-condition for sustainability, and independence of funding for the judiciary from the executive parts of the legal sector is important in this regard: political forces will often use their possible power of the purse to influence judicial behaviour.

General Framework Issues

- While the situation and dynamics in the seven Western Balkan states and territories are quite different, in all of them there have been major improvements to the fundamental institutional and organisational frameworks in the legal sector. The laws and formal structures that have been put in place are increasingly in line with EU *acquis* (where that is explicit) and European standards. The EU has clearly played a critical role both at political but also at funding (project and program) levels to support, cajole and demand required changes for the individual EU accession processes to move forward. Having chapters 23 and 24 as the key (opening and closing) chapters has made the support to Rule of Law issues more central to the accession process, and undoubtedly been an important contributing factor to the changes seen.
- The legal philosophy of the judiciary has undergone a fundamental change, moving from being an instrument of state power during the Yugoslav era to becoming a key aspect of a modern state built on the principles of separation of powers and thus the importance of an independent, effective and quality judiciary, in some countries also moving from an inquisitorial system based on civil law towards an accusatorial (adversarial) system and common law principles.
- Most of the countries have passed an impressive array of new legislation (see the country annexes for detailed listings). There are important holes in some countries' legislation, and supplementary rules and regulations are often missing, but the key pillars for a modern body of law are in place.
- Much of the early donor support to justice sector reform was uncoordinated, where a focus on visible results led to a bias in favour of infrastructure and equipment provision. There has over time been a notable shift towards more structural and long-term capacity development programmes, and also better coordination of the assistance especially where the national authorities have developed own (national) operational strategies. In a number of the states, however, there is still clearly some ways to go before coordination functions as it should and conditions for genuine sector programming are in place.
- Within the larger justice sector picture, however, the problems of corruption and organised crime remain serious concerns. This is not least of all due to the fact that there are inter-linkages between corruption in the public sphere, driven by members of political elites, and organised crime. Some of this can be traced back to the wars in the region, where armed groups became entwined in the political fabric of society. This embeddedness makes for a particularly complex reality that will take time, resources and not least of all national mobilization to address.
- It is also clear that corruption and organised crime are becoming more sophisticated in their forms and linkages, and that modern business instruments are used to shield activities from insight and assets from seizure. The pervasiveness of political elites and organised crime to try to intimidate and influence the judiciary is of major concern.

- Genuine reform and efficient and effective fight against corruption and organised crime face several challenges: there is surprisingly little in-depth and research based knowledge about corruption and organised crime; virtually no evaluative work on efforts to address these problems; there is considerable public cynicism regarding efforts to address the issues which means popular mobilisation is difficult; the watch-dog and advocacy groups that exist are generally few, weak and with little long-term financing and capabilities, which makes them vulnerable to pressure; the links between public accountability bodies and non-state actors is in most of the states weak and in some cases there is a lack of mutual trust.
- This also points to the need for building stronger and wider ownership to Rule of Law objectives through inclusive and participatory programming. There is a need to give voice to non-executive state actors (such as parliamentary committees, judiciary bodies) and concerned non-state actors (advocacy groups, professional associations like lawyers' associations, unions, etc.) (such as Serbia's invitation to civil society groups to work along sector lines on issues).

Judicial Reform

- Independence and professionalism has been enhanced with the modernisation of institutional setup. Most countries now have established judicial and prosecutorial councils in charge of setting standards, proposing or even approving new judges/prosecutors, assessing their work and even dismissing them. Some, like BiH, Kosovo and Serbia, have gone through a total restructuring of the court system and a vetting and (re)hiring of judges and prosecutors (though in Serbia the process and its results have been declared invalid). Implementing such a massive and simultaneous change in systems, structure and personnel is in itself a major achievement, though successful exploitation of the full potentialities of these changes is in most countries still some ways off, for both capacity reasons but also for lack of political support and will.
- Infrastructure has been upgraded, physical buildings, equipment and vehicles, but also communications systems and various database services such as electronic case management systems (CMS). This has in some cases already produced notable improvements in court efficiency, and in other cases laid the foundations for this taking place over the years to come.
- Impartiality and efficiency of courts has been enhanced with the introduction of CMS, the judiciary is able to use randomisation of case allocations to reduce probability of corruption and influencing. It also has allowed judges, prosecutors, police and others access to an increasing body of court cases, which is important for ensuring consistency and coherence in the understanding and application of the law as well as enhancing impartiality of courts.
- Professionalism has been enhanced through the establishment of training centres that provide judges, prosecutors and others with relevant skills for a more modern and efficient judiciary.
- While the main dimensions of the institutional framework for a modern judiciary in line with EU standards either are in place or coming into place, the big challenges are (i) implementation/ application of the new body of law that has been passed, (ii) operationalisation/ funding/ staffing of new organisations/ entities that have been established.
- One of the key challenges is changing the “corporate culture” of the larger judiciary – an understanding of the EU concepts and how to apply them, including clearer roles and better performance standards. In order to succeed, continuous training and – where needed – external assistance must be longer-term, predictable, where external expertise is carefully selected to produce visible value-added to the local actor/s.

- Peer learning through regional collaboration has been promoted for a long time and is given high marks by all and may be a key instrument for addressing lags in “corporate culture”.
- The judiciary needs to be able to program its support independently from the Ministry of Justice as otherwise there may be a conflict of interest (for example for assistance that is to strengthen the independence of the judiciary).
- In many states, a huge backlog of cases hampers the efficiency of the judiciary. Most of these are minor offenses (traffic violations, unpaid utility bills etc.) that alternative and non-court based dispute resolution mechanisms could handle. EU funding is supporting the piloting of such approaches in several countries but could do more.
- The importance of training of large numbers of staff is noted as important, both to transmit technical knowledge widely in an organisation but also to inculcate values and standards – “corporate culture”.
- **Impact and Sustainability** is largely held back by a lack of predictable and sufficient public funding. However, improvements in court case processing due to better and more wide-spread ICT-based systems are expected to continue to provide better legal Outcomes and thus, if and when the public at large gains increased confidence in the legal system as a fair and efficient arbiter of disputes and adjudicator of criminal offenses, public support may increase.

Fighting Corruption in the Western Balkans

- EU funding has supported important improvements in the institutional frameworks for fighting corruption: better laws, establishment of anti-corruption agencies and strategies, action plans for information and prevention activities, addressing conflict of interest issues in public administration. The big challenge across the region is genuine implementation and results.
- While corruption ratings have improved somewhat in some of the countries, the Western Balkan states as a whole remain among those with the poorest ratings in Europe. In most countries, corruption is seen as deeply embedded in the national and local politics, with strong links to organised crime groups in some of the states, as noted above.
- In most countries, corruption is pervasive and touches on core interests of important parts of the political elite. Programming of anti-corruption work will therefore have to be based on the mobilization of a broad range of stakeholders who may have somewhat different interests in the issue. Support to CSOs in this field has been *ad hoc* and seemingly without a longer-term and broad-based strategic perspective.
- As far as results from the current support is concerned, the limited funding and results reporting, including lack of relevant indicators of achievement, mean that it has not been possible to identify results up to Outcome level (for example what the passing of new laws has meant in terms of better identification and conviction in cases of corruption).
- In order to monitor results better, more sophisticated tracking will be required, and there should be particular attention paid to high-level corruption cases.

Fighting Organised Crime in the Western Balkans

- The fight against organised crime is a fairly recent field of EU assistance, and has generally received limited funding so far. Focus has been on strengthening particular units in ministries or the police, setting up anti-laundering offices and links to financial intermediation actors.

- The formal legal framework is generally improving, though in several countries laws on money laundering, confiscation of gains from illegal activities, the management of such assets once confiscated and other measures to combat organised crime, are inadequate as against EU standards.
- Most countries have established anti-money laundering units, and training and collaboration with relevant authorities is improving, including cross-border collaboration, but in most countries relations, links and formal roles need to be clarified and strengthened.
- The control with cross-border smuggling of weapons, drugs and human beings (trafficking), has received increasing attention, and regional collaboration has generally improved. Several states do not yet have operational agreements with pan-European bodies like Europol due to shortcomings in own systems, laws and controls.
- In several countries, when the police are able to arrest suspects of organised crime, the justice system has often not been able (or willing) to prosecute, so more attention needs to be paid to what exactly is holding back progress in this field. The success rate in cases involving local political-criminal partnerships appears to be particularly poor.
- While weak technical skills and limited resources remain a serious bottleneck to fighting organised crime, a key challenge for improving performance is the lack of cooperation between and among different bodies across jurisdictions, and behind that the lack of commitment by political leaderships in taking on this sensitive issue.
- Yet political commitment is a key factor for the success of Rule of Law assistance in general and for measures against organised crime in particular. Political commitment could increase if projects against organised crime were designed and/or implemented jointly among main donors. Political commitment could also increase if progress was regularly assessed based on detailed indicators and if results of these independent assessments were made public.
- Across the region, Progress Reports stress the need to establish efficient institutional mechanisms for inter-agency cooperation. A sector approach would help facilitate such cooperation where activities do not just target individual agencies but include activities that aim at strengthening information sharing, co-ordination and joint action among relevant agencies.
- Due to the long-term nature of this task, there should be a focus on a few priorities providing sustained and consistent assistance in successive years, where the sub-sector of criminal asset recovery is one of the most promising.

Programming IPA II Resources

In chapter 7, a comprehensive list of findings, conclusions and recommendations is presented. From this, what the team considers to be the most strategic recommendations for the upcoming IPA II funding cycle are presented below, structured by four key dimensions of the programming cycle.

Because the seven states are at quite different stages of their rule of law development and accession dialogue with the EU, and the internal dynamics (pace of reforms and progress) are quite different, the actual relevance of the proposals may vary from one state to another. This means the actual operationalisation of a recommendation also would have to be adapted. This means some of the language may appear unnecessarily vague and thus without content in the face of specific needs for programming choices, but given the reality of a region where seven actors are more and more moving at their own pace and according to own priorities, this is largely unavoidable.

Frameworks for EU Support

1. The funding levels (share of IPA funds) required to address the requirements of chapters 23 and 24 should be assessed, where the parties may have to agree a substantial increase. The EU should also ensure that the local Delegation has the capacity to carry both the policy dialogue and the oversight functions to ensure that the programme/projects remain on track.
2. Successful judicial reform requires predictable, stable planning parameters and financing. Programming instruments and cycles need to support this:
 - On the **beneficiary side**, judicial reform programmes should be clear priorities reflected in national policy/budget propositions to parliaments for debate and approval.
 - On the **EU side**, priority programs/projects could have a full IPA II (five to seven-year) time horizon, with clear “stoppage points” for review and adjustment but with financing in principle available for the program period.
3. Defending and developing the independence, integrity and quality of the judiciary should be a top policy and assistance concern. A “vulnerability/risk” analysis of the judiciary could form the basis for an action plan that should be given priority in terms of financing and monitoring.
4. Sustainable judicial reform will require the strengthening of public sector accountability actors – ombudsmen, internal inspectorates, internal audit, supreme audit institution, parliamentary oversight bodies – as critical supplements to legal action (*horizontal accountability in the state*). These would typically not receive RoL financing, but the EU should ensure that national and/or international (EU?) support is put in place.
5. Sustainable judicial reform will require support to non-state actors, for them to become more structured, long-term and strategic (*building vertical accountability systems and capacities*). This may or may not be a RoL component, but should be encouraged.
6. A user-friendly database on projects and disbursements should be publicly available (on the EU Delegation homepage or national authority web-site) to facilitate transparency and insight into resource allocations by DAC sector, beneficiary, year, and other key parameters.

Programming Rule of Law Activities

7. The simplification of IPA II programming to fewer instruments, fewer revisions, more sector programming with longer time-horizons is strongly supported. The programming of IPA II-funds should be based on genuine participatory programming to ensure broad stakeholder involvement, ownership and agreement. This must include non-executive state actors (judiciary, parliament) and relevant non-state actors.
8. EU should only apply sector programming when conditions are in place: macro-economic framework, planning and budget system allow for predictable financing; sector policies and priorities are visible in the public budget; donor co-ordination and sector capacity is acceptable; performance assessment frameworks are reasonably clear; political will and commitment by national authorities to implement is credible. Where these conditions are not met, the EU should support interested national authorities get them in place as soon as feasible.
9. Continued institutional support to strategic judiciary sector actors can usually be based on a sector approach, should be long-term and include monitorable “corporate culture” dimensions in the results framework.

Implementing Rule of Law Activities

10. The time between prioritization in principle and actual activity design needs to be reduced. Basic design with a results framework that contains Outcomes and priority Outputs should be sufficient for start-up, followed by piloting/ detailed design phase (an approach often used already).
11. Because RoL activities tend to come up against unforeseen blockages, flexibility in reallocation of resources, shifting of timelines etc. should be accepted and quickly processed locally. While Outcomes remain fixed, changes to activities and Outputs should be accommodated.
12. The commitment and appropriateness of long-term experts has proven to be critical to project success and thus should be based on both local ownership and management of the contracts, but also on modern human resources management principles for identification and selection.

Monitoring and Reporting Rule of Law Activities

13. In order to track *sector performance* and not just *project results*, RoL programmes should consider establishing sector performance assessment frameworks (**PAF**) with SMART indicators for key dimensions. While this may take some time to get fully in place, it will better enable the partners track actual transformations and Outcome results (see box 7.2).
14. Whatever the structure of the results framework – whether based on individual projects to begin with or larger integrated programmes – an overall Monitoring and Results strategy should be designed that prioritises which projects/activities are to be monitored how often with which instruments (internal administrative reports, external ROM reports, ad hoc in-depth studies), and which variables are to be traced how far out the delivery chain. The design should ensure that key variables across activities are monitored in similar ways (changes to “corporate culture”, client satisfaction, business use of courts to settle disputes etc.).
15. While ROM reports and “SMART” indicators will be part of such a system, the EU should also set aside funds for innovative quality assurance activities, using local knowledge centres, CSOs and others, to track perceptions, experiences of groups that come in touch with the legal system. Use of social media, qualitative surveys etc. can provide cost-efficient, quick and flexible ways of identifying successes and short-comings, and test new approaches and ideas on how to further improve legal sector performance (see box 7.3).

1. Introduction and Objectives

Any European country that respects the principles of liberty and democracy, human rights and fundamental freedoms and the rule of law, may apply to become a member of the EU. However, it will have to apply the "*acquis*", i.e. the entire body of EU law already in place. The seven states and territories of Albania, Bosnia and Herzegovina (BiH), Croatia, Kosovo, Former Yugoslav Republic of Macedonia, FYR Macedonia), Montenegro and Serbia are all in various stages of dialogue concerning future membership in the EU. State-building, consolidation of institutions and better governance are priority concerns. And within this field, the enforcement of the Rule of Law (RoL), notably through judicial reform and the fight against corruption and organised crime, is a major issue throughout the region.

In the EU's Enlargement Strategy of November 2010, the Commission notes that moving forward in the EU accession process depends, among other things, on demonstrating *tangible results* that are likely to bring sustained improvements in the application of the rule of law.

To support candidate countries to build their capacity in order to adopt and implement EU law, including in the field of Rule of Law, the Commission provided financial assistance via the Community Assistance for Reconstruction, Development and Stability (CARDS) programme during the period 2000-2006, and as of 2007 through the Instrument for Pre-accession Assistance (IPA).

DG ELARG commissioned a thematic review to provide findings and recommendations to aid the programming of IPA funding foreseen for the period 2014-2020 ("IPA II"). This review was to look at lessons learned from key interventions funded during the last several years, but primarily to look ahead and provide suggestions for how IPA II financing ought to be structured, as follows:

- **Lot 1:** An independent evaluation on the performance of financial assistance and supported reforms in the area of Governance, Rule of Law, Judicial Reform and Fight against Corruption and Organised Crime, including reporting of lessons learned.
- **Lot 2:** Identifying and developing possible SMART objectives and indicators of measurement to support programming and monitoring of performance of financial assistance and reforms.
- **Lot 3:** Providing operational recommendations to assist the DG ELARG in the programming of future pre-accession assistance to candidate and potential candidate countries. The Lot 3 is in particular to assist the Commission identify how its future assistance should be programmed in order to ensure better and sustainable results in field of rule of law throughout the region.
- This report addresses the tasks that were to be covered under Lot 3, with a minor amendment to include some issues that were originally foreseen under Lot 1 (see section 1.1).

1.1 Objectives of the Review

- The **Overarching Objective** for Lot 3 is to provide operational recommendations for future programming. This should be based on the findings from the results in the region, but should also include identifying good practices in the more recent EU member countries and assess how these can be applied to the enlargement states.

The **Purpose** of the Lot 3 task is the following:

- Identify measures, reforms and actions having had an impact in the areas of Judicial Reform and Fight against Corruption and Organised Crime in transition countries, including which were the key factors for success/failure;
- Based on the above, provide recommendations for the programming of future EU pre-accession assistance, and related EU-supported reform where applicable, in the above areas;
- Assess and recommend to which extent similar reforms are likely to have a positive impact and sustainability in the Western Balkans in the context of pre-accession to EU;
- Provide guidance on how measures and reforms should be prioritised and, where relevant, sequenced.

1.2 Questions to be Addressed (EQs)

Since Lot 1 was never carried out, three questions were added to the five that Lot 3 is to address:

- **EQ1:** Which have been the weaknesses and strengths of assistance and related reforms in achieving results?
- **EQ2:** Which lessons can be learned from the implementation of assistance and how these lessons can be embedded into future EU pre-accession programming?
- **EQ3:** Which are the types of assistance and reforms (legal and institutional) as well as their sequencing that have achieved the most sustainable results in transition countries?
- **EQ4:** How can they be applied in the Western Balkans countries?
- **EQ5:** Which lessons can be learned from other transition countries? How could these lessons be taken into consideration in the programming and reform process to the Western Balkans?
- **EQ6: *Intervention logic/relevance:*** To what extent has financial assistance addressed the priorities outlined in key enlargement strategic and policy documents in the area of rule of law, judiciary, fight against organised crime and fight against corruption?
- **EQ7: *Efficiency:*** How efficient is the selection of interventions to address priorities in the above?
- **EQ8: *Impact/Sustainability:*** What are the key factors having an influence on the impact and sustainability of assistance in the above areas?

Chapter 2 presents the overall approach and methodology of this review.

Chapter 3 provides an overview of the EU's support to RoL programming, addressing EQ6 and EQ7 (section 3.2) before looking at lessons from other RoL support, to address EQ5 (section 3.3).

Chapter 4 looks at the support to judicial reform and presents conclusions from this support, to be used for addressing the remaining evaluative questions.

Chapters 5 and 6 are similar to chapter 4, looking into EU assistance to the fight corruption (chapter 5) and organised crime (chapter 6), and thus the basis for addressing EQ1, EQ2, EQ3 and EQ8.

Chapter 7 first reviews the evaluative questions (section 7.1), summarises the views from stakeholders in the region (section 7.2); before providing the key recommendations for future programming of IPA resources (section 7.3).

2. Approach and Methodology

The task given to the team contains two components: summing up “lessons learned” from previous EU and other donor funded Rule of Law support (the eight evaluation questions), and stakeholder views on how EU financing can produce better results in this field in the period to come.

Section 2.1 discusses how the team has structured the eight evaluation questions, while section 2.2 looks at how the stakeholder views have been assembled and used for the final recommendations.

2.1 Structuring the Questions

The eight questions provided in the list above (section 1.2) basically make up four sets of issues.

- EQ6 and EQ7 form an evaluative foundation for the analysis: to what extent has EU funding reflected policy priorities, and how well has the selection of specific interventions addressed these?
- EQ3 and EQ8 ask the team to assess the sustainability and impact of results as the basis for identifying what kinds of interventions are producing desired effects.
- EQ1 and EQ2 ask about the strengths and weaknesses of the assistance provided and what can be learned from these for future programming.
- Finally, EQ5 goes on to ask the team to look beyond the Western Balkans for insights into what kinds of RoL reforms have worked in transition economies in general, while EQ4 then summarises by asking how these various lessons can be applied in the Western Balkans.

The sections below show how the team has gone about addressing these issues.

2.1.1 Intervention Logic: Relevance and Efficiency

Questions 6 and 7 deal with the overarching programming logic with regards to Rule of Law financing. EU funding in this area really began with the **Community Assistance for Reconstruction, Development and Stabilisation** (CARDS) programme, which was the main channel of EU funding for the region till the end of 2006. This was subsequently replaced by the **Instrument for Pre-Accession Assistance** (IPA) as the main funding vehicle as of 2007, exactly to address what was perceived to be weaknesses in how CARDS funds were programmed.

The CARDS programming process is hence not relevant for these issues. Instead this part of the analysis focused on the IPA programming process and its instruments during the period 2007-2011.

There are essentially three levels of programming that takes place:

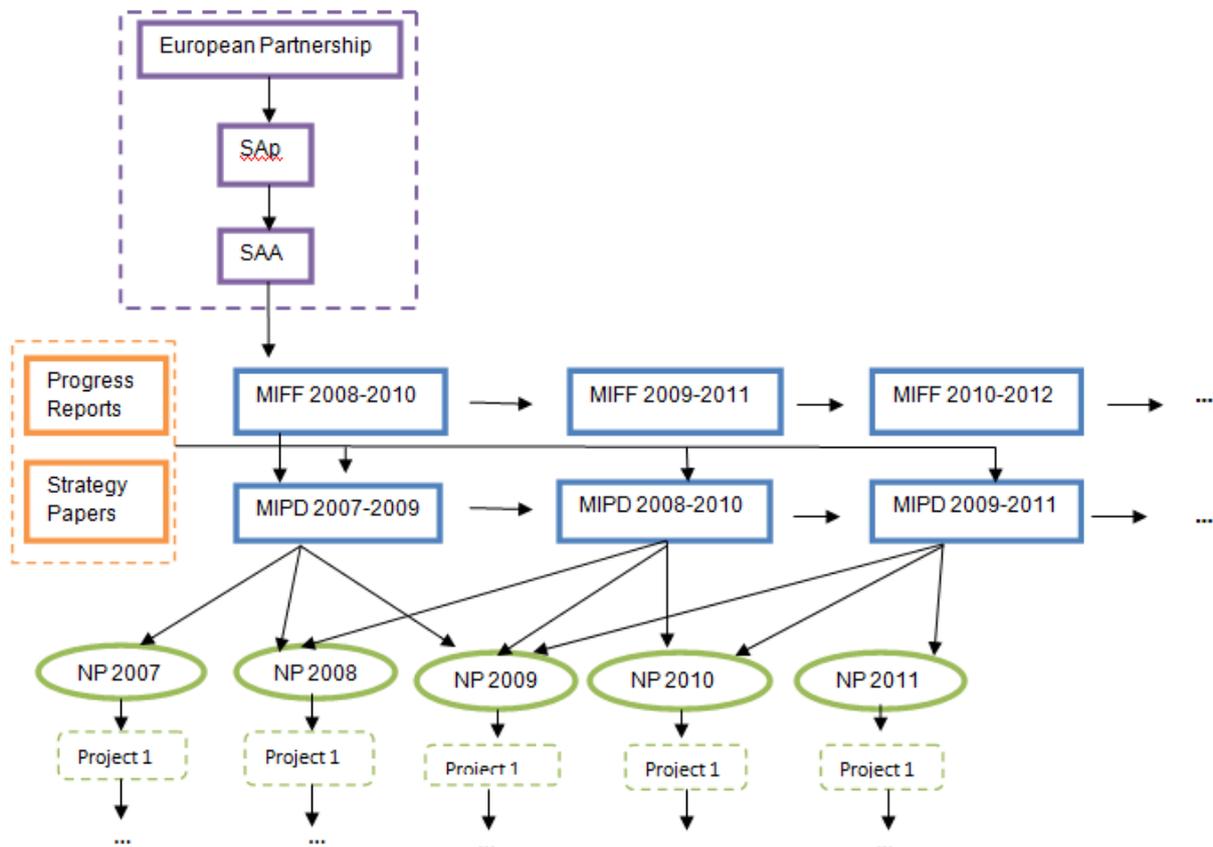
1. **Policy and strategy documents** are negotiated agreements between the EU and the partner countries and set the political objectives and other parameters for EU assistance. This is typically done in the form of a European Partnership paper, a Stabilisation and Association process (SAP) followed by a Stabilisation and Association Agreement (SAA) once negotiations are successful.
2. The three-year **Multi-annual Indicative Financial Framework** (MIFF) is a regional funds allocation document showing available IPA funds across eligible countries (including all the seven Western Balkans states) and eligible Components (Transition Assistance and Institution Building; Cross-border Cooperation; etc.). The first MIFF was for 2008-2010. The MIFF is the basis for country-specific **Multi-annual Indicative Planning Documents** (MIPDs) that provide rolling

three-year financial frameworks across sectors with general objectives defined. MIPDs are thus more operational documents that “lag” the MIFFs by a year.

- Most countries develop annual **National Programmes** (NPs) in cooperation with EC services. These provide allocation of funds across proposed projects. The **Project Fiches** then present what the projects are to attain, how, by when, and which sector objective they are to contribute to.

The team addressed the issues of funding Relevance and Efficiency by reviewing the links between overarching policy objectives (the “policy box” in figure 2.1) to MIPDs (financial allocations), followed by the extent to which country project portfolios reflect MIPD parameters as revealed in NPs and project fiches. This was done in each of the country cases, since the structure of the different country project portfolios varied, but also because roles in programming were not similar (Croatia already uses Decentralised Implementation System (DIS) and is not obliged to carry out external Results Oriented Monitoring (ROM) though it could have elected to implement its own system, as Turkey does, using national contracting). The findings and conclusions from these exercises are presented in section 3.2 and based on the country reports (annexes D-I).

Figure 2.1: Structure of IPA Programming for a Country



2.1.2 Strengths and Weaknesses of Assistance and Reforms

The team was asked to focus on achievements in the fields of judicial reform, fight against corruption and organised crime. The analysis of strengths and weaknesses of IPA assistance and reforms carried out has therefore been structured around these three dimensions, as presented in chapters 4 through 6.

The empirical basis for addressing the questions has been the Results Oriented Monitoring (ROM) reports that have been done on CARDS and IPA funded activities, and the field visits to each of the seven states. Team members interviewed a range of stakeholders – public officials, CSOs, business people, donor representatives, EU Delegation – regarding their experiences with IPA funding and their proposals regarding future IPA financing.

The empirical foundations for this section are therefore to be found at country level, and the country reviews are attached as annexes to this report. The main findings and conclusions regarding these questions are presented in section 7.1.1

2.1.3 Impact and Sustainability of the Assistance

The team was asked to look for projects that appear to be sustainable and are having an impact. This task turned out to be more challenging than originally expected. This is in part due to a paucity of results reporting – there are surprisingly few evaluations on RoL activities.

More importantly, however, activities funded under the IPA programme – which is what the team had to focus on for relevant experience – in most cases only began implementation towards the end of 2008 or in 2009. These projects have therefore had a relatively short history and not much time to produce more long-term Outcomes and Impact. The team has relied on the few projects where results can be identified, and used the ROM report assessments of *Impact to date* and *Potential sustainability*. These issues are again addressed in the three substance chapters 4 through 6, and the findings and conclusions are presented in section 7.1.2.

2.1.4 What are other Lessons Learned, and how to Embed them in Programming

EU funded activities are necessarily the focus of attention for this study. But other actors are also engaged in supporting the Rule of Law in the Western Balkans, such as the Council of Europe, UN agencies, bilateral donors, World Bank and others. These actors have produced documentation based on their practical and/or analytical work, though it must again be said that the number of such studies turns out to be rather limited.

While this task is focused on the Western Balkans, knowledge products produced by other agencies also included “lessons learned” from neighbouring regions, so to the extent this was seen as relevant, these studies were included and are presented in section 3.3 (see Annex B for documents consulted).

2.2 Looking Ahead and Generating Recommendations

The fairly short field visits focused on hearing from a wide range of relevant stakeholders their experiences with previous IPA funded activities, and their views on what was considered feasible and desirable over the coming period regarding better programming of EU funds for addressing the three dimensions of Rule of Law. Despite framework conditions for Rule of Law work differing considerably across countries, a number of issues emerged across the region, which are presented in section 7.2 (Annex C gives a list of all informants met).

2.3 Overall Methodological Tools and Approach

The general structure of the task and data collection instruments used is presented in Annex A.

Important note: *The team has been asked to look at the sub-dimensions of support to judicial reform and the fight against corruption and organised crime. Other important and relevant dimensions of Rule of Law, such as border control, prison services, regular police operations are thus not covered either by the activities or the funding data looked at.*

3. Rule of Law in the Region

The concept of the Rule of Law is founded on the idea that governmental decisions should be made by applying known legal principles, and that every citizen is subject to the law and nobody stands above it. It is now extended by referring to the international conventions that address what are considered to be basic human rights – that the Rule of Law, in order to be legitimate, must adhere to and be in compliance with these basic precepts of rights.

This chapter first lays out the parameters set for this task: the specific instrument that the team was to focus on, and the sub-fields of Rule of Law the team was to address (section 3.1). The following sub-sections then present the situation found in each of the states and territories looked at in the region, and in general terms the levels of assistance provided.

This is followed by a summary of the experience from the programming of the IPA funds across the (section 3.2). Like the previous section, this builds on the country reports that were prepared after the visits to the various states and territories (annexes D through I), focusing on the evaluation questions concerning the relevance/policy priorities and efficiency of programming.

In addition to the experiences documented in the country reports, the team was asked to present other assessments regarding support to Rule of Law efforts in the region and other recent transition economies. This is done in section 3.3

Section 3.4 then summarises the main findings and conclusions from these various strands of evidence. Focus is on identifying lessons that are of greatest relevance to how the Western Balkan states and the EU should programme future support in the field of Rule of Law interventions.

3.1 EU Assistance to Rule of Law in Western Balkans

Rule of Law activities have been important throughout the period that the EU has provided assistance in the Western Balkans. As noted above, major assistance was provided under the CARDS programme over the period 2000-2006 (Council Resolution 2666/2000 of 05.12.2000), covering all the states in the Western Balkans as the political map was structured at that time, replacing the previous OBNOVA programme. In addition some funding had been provided over the so-called PHARE programme (originally *Poland and Hungary Assistance for the Restructuring of the Economy*).

The IPA programme (Council Regulation 1085/2006 of 17.07.2006) covering the period 2007-2013 then replaced the CARDS and PHARE funding. The situation on the ground was by then quite different. During the CARDS period, many of the states had to (re-)build public institutions after the dissolution of the former Yugoslavia, requiring restructuring of agencies that had been set up under very different political and constitutional regimes, preparing new framework laws, etc. At the same time issues such as the fight against organised crime and corruption took on increased importance.

The speed and depth of subsequent transformations have varied by country. The IPA programmes in the seven states have thus increasingly become defined by the specific challenges and constraints in each state, though with the overarching EU accession criteria remaining largely the same. This situation has formed the starting point for this review.

The team has been asked to look at particular sub-fields within the larger Rule of Law universe, namely *judicial reform*, *fight against corruption*, and *fight against organised crime*. These are seen as particularly important challenges across the Western Balkans that need to be successfully addressed in order for these states to become members of the EU.

3.1.1 Situation and Assistance, Albania (see Annex D)

The Republic of Albania signed the Stabilization and Association Agreement (SAA) in June 2006 which entered into force in April 2009. In 2008 a new European Partnership was adopted by the Council and the country has continued to make progress in addressing the defined priorities (MIPD 2011-13).

In 2009 Albania applied for a membership in the European Union. Following a request by the Council, the Commission submitted its Opinion on Albania's application in November 2010 addressing the priorities and challenges in the accession process. In December 2010, visa liberalization entered into force. In October 2012 the Commission recommended Albania to be granted with the EU candidate status, subject to completion of certain measures in the judiciary, public administration reform and parliamentary rules of procedures.

Albania generally has sector strategies in place. A Judicial Reform Strategy and Action Plan was adopted in July 2011 and its implementation is on-going. The MIPD 2011-2013 identifies the first priority for IPA support to be strengthening rule of law, the independence, efficiency and accountability of judicial institutions and increase the fight against organised crime.

For the period 2007-2011, Albania received just over € 400 million in IPA funding. Of this, only € 11 million was specifically for judicial reform and to combat corruption and organised crime². This constitutes less than 3% of the IPA funding available.

3.1.2 Situation and Assistance, Bosnia and Herzegovina (see Annex E)

Bosnia and Herzegovina (BiH) proclaimed independence in 1992, followed by a bloody war that ended with the Dayton Peace Agreement (DPA) in December 1995. The DPA gives most authority to the two Entities, Republika Srpska (RS) and the Federation of Bosnia and Herzegovina (FBiH), with a weak state structure on top. The district of Brčko has a high degree of autonomy outside the two Entities, while FBiH is sub-divided into ten Cantons, each with considerable powers on legal matters.

The Stabilisation and Association Process (SAP) proposed by EU in 1999 included BiH, and the BiH Council of Ministers (CoM) confirmed its commitment to EU integration as a priority in October 2002. In 2004 the first European Partnership (EP) was formally adopted with a detailed plan for BiH's process towards EU membership. 16 priority reforms were identified, and based on the CoM's programme to address these, the formal Stabilisation and Association Agreement (SAA) negotiations began in November 2005. The SAA was signed in June 2008, and the EU Integration Strategy was adopted by BiH the following month. However, implementation of the steps necessary to reach EU Candidate status has been poor, with major hurdles remaining.

The major issue in BiH is the fragmented national polity along ethnic-geographic lines. Allocation of decision-making positions within the public sector at State, Entity and often also at Canton levels is based on ethnic considerations. At State level, an ethnic "balance" is achieved by having senior posts filled by staff from the three dominant ethnic groups, thereby ensuring that all ethnic-political conflicts are reproduced within the senior management of any given ministry. EU Progress Reports consistently refer to political interference in the judicial system as a major cause of concern.

² Two large prison support projects totalling € 36.7 million and a major police reform project of € 7.3 million are also often counted in this category but are not to be included in this study.

To address the problems in the sector, a comprehensive *Justice Sector Reform Strategy* for the period 2008-2012 was produced through a joint effort by the Ministries of Justice at State, Entity and Canton levels, Brčko district and the High Judicial and Prosecutorial Council. As such, the strategy not only incorporates reforms of the judiciary but also of areas falling under the executives. Overall, there has been little progress since political actors have not agreed on implementation of the action plan.

The EU thus put in place the *Structured Dialogue on Justice*, with particular emphasis on the judiciary as a platform for the EU and actors on the Bosnian side to discuss how the country can align its judicial system with the EU *acquis* and where the aim is “*the development and consolidation of an independent, credible, effective, efficient, impartial and accountable judiciary*” (EC fact sheet). The Dialogue is meant as a continuous process with six-monthly meetings, where the EU has produced approximately 65 recommendations that have been drawn up in conclusion of the meetings.

In 2010 there were “66 strategies adopted at state and Entity levels of government. However, only a limited number of areas enjoy comprehensive sectoral strategies linked with appropriate action plans and connected with the budgetary framework” (Picard & Kacapor 2010, p. 9). Given this background, the move to a sector based approach to programming that was begun with the MIPD 2011-2013 selected only one sector, namely justice, as a pioneer. The choice was made based on “*meeting appropriate minimum conditions – high priority in the EU accession process; existence of an overarching strategy; inter-ministerial cooperation and joint support by donors*” (ibid).

BiH received a total of € 415 million in IPA fund during the five years 2007-2011. Of this, 11 projects in the fields of judicial reform and anti-corruption received allocations of € 21.5 million – that is, just over 5% of available funding. In addition, the EU Police Mission (EUPM) to BiH contributed training and equipment apart from its oversight and control functions. EUPM ended its mission in June 2012.

3.1.3 Situation and Assistance, Croatia (see Annex F)

The SAA between Croatia and the EU was signed in October 2001 and entered into force in February 2005. In June 2004 the European Council granted the status of candidate country to Croatia and accession negotiations with Croatia were opened in October 2005. These were completed on 30 June 2011 and the Commission issued the Opinion that Croatia meets the political criteria and expects Croatia to meet the economic and *acquis* criteria and to be ready for membership by 1 July 2013.

IPA support to the justice sector has been continuously provided with follow up projects and different types of assistance while funding for anti-corruption has been strengthened as of IPA 2008 by supporting institutions and CSOs. Croatia received IPA funding for a total of € 257.4 million during the five-year period 2007-2011. 17 judicial reform and 15 anti-corruption projects with total budgets of € 30.8 million have been funded, making up nearly 12% of total IPA funding, the highest in the region (see figure 3.1).

3.1.4 Situation and Assistance, Kosovo (see Annex G)

Under Security Council Resolution 1244, governance of Kosovo passed to the United Nations in 1999. Kosovo declared itself an independent state in 2008. Following the reconfiguration of the international presence, the EU's rule of law mission EULEX has been deployed throughout Kosovo with the support of authorities, and is fully operational. Kosovo has joined the IMF and the World Bank and adopted key legislation. However, major challenges remain, including aspects of the rule of law, the fight against corruption and organised crime, the strengthening of administrative capacity, the protection of the Serb and other minorities, and other human rights based concerns.

During the five years 2007-2011, Kosovo received IPA funding totalling € 422 million. Of this, funding for judicial reform and the fight against corruption and organised crime amounted to € 49.2 million – about 11.7% of total IPA funding. This represents the second-highest *share* of IPA funding in the region, the largest in terms of absolute funding. However, € 25 million is for the Palace of Justice and € 9.2 million for a prison and psychiatric unit, so the physical infrastructure component makes up 70% of this funding. In a new state requiring new infrastructure, this is explainable but points to issues when comparing funding profiles across countries.

3.1.5 Situation and Assistance, Former Yugoslav Republic of Macedonia (see Annex H)

The Former Yugoslav Republic of Macedonia (FYR Macedonia) was the first country in the Western Balkans to sign an SAA in April 2001. The Agreement entered into force in 2004. In the same year, it applied for EU membership and was granted candidate status in December 2005. As of 15 March 2012 a High Level Accession Dialogue (HLAD) was launched by the government and the Commission focusing on five key areas: protecting freedom of expression in the media; strengthening the rule of law; reforming public administration; improving the election process While the country has shown progress in key reforms, there are significant challenges remaining in strengthening the independence of the judiciary and fighting corruption, and major shortcomings exist in legislation implementation and effective enforcement (EC 2011a, p. 26, 40).

The country has adopted a number of documents relevant for the accession: Strategy for Reform of Criminal Legislation 2007-2011; National Action Plan for implementation of the Penitentiary system reforms 2009-2014; State Programme for Prevention and Repression of Corruption and Reduction of Conflict of Interest with Action Plan 2011-2015.

The Progress Report of 2010 noted limited progress in judicial reform though a reduction of backlog of cases was observed. According to the 2011 Progress Report, further amendments as regards to independence, efficiency and transparency of justice were made to the legal framework with the adoption of a judicial reform package and in removing the voting rights of the Minister of Justice on the Judicial Council.

FYR Macedonia received a total of € 400 million in IPA support during the years 2007-2011. Of this, € 25.3 million went to the general Rule of Law fields, and of this about € 17.7 million to the three sub-fields addressed in this report.

3.1.6 Situation and Assistance, Montenegro (see Annex I)

In June 2006, the Montenegrin Parliament declared independence following a referendum. In January 2007, the European Council adopted the European Partnership (EP) for Montenegro. The Stabilisation and Association Agreement (SAA) between Montenegro and the EU was signed in October 2007 and entered into force in May 2010. The SAA states, under Article 80, that in their co-operation on justice, freedom and security, the Parties shall attach particular importance to the consolidation of the rule of law, law enforcement and the administration of justice in particular. The article stresses that co-operation will aim at strengthening the independence of the judiciary and improving its efficiency. Montenegro presented its application for membership of the European Union on 15 December 2008. In 2010, the Commission issued a favourable opinion on Montenegro's application, identifying 7 key priorities that would need to be addressed for negotiations to begin, with a strong focus on the rule of law. The Council granted Montenegro candidate status In December 2010. In December 2011, the Council launched the accession process with a view to opening negotiations in June 2012. Accession negotiations started in June 2012.

The country faces two major challenges: a weak governance system, and prevalence of corruption that penetrates all spheres of society. The justice system is the most important mechanism for the fight against corruption. Given that significant changes in strategies, policies and legislation have been made or are currently underway, the biggest challenge now lies in a rigorous enforcement of laws in a country with a small population with an abundance of close relations to high-ranking officials who are often central in corruption scandals.

The Ministry of Justice (MoJ) has been the key change agent in bringing about sector reforms: the preparation and adoption of the Strategy for the Reform of the Judiciary (2007-2012) and the comprehensive Action Plan for Judicial Reform. The Government of Montenegro passed the Programme of the Fight against Corruption and Organised Crime (August 2005) and the Action Plan for Implementation of the Programme of the Fight against Corruption and Organised Crime and it formed a National Commission to monitor implementation of the Action Plan in February 2007. The Commission adopted its first report in April 2011. In the meantime a new Anti-Corruption Strategy for the period 2010-2014 has been passed, along with an Action Plan for the period 2010-2012. An Action Plan for combating organised crime was adopted in January 2012 which introduces operational measures and indicators in line with the priorities identified in the 2011 organised crime threat assessment (OCTA).

For the IPA period 2007-2011, a total of about € 205 million has been provided under Category I, while a total of 11 projects were approved that covered judicial reform and fight against corruption with total budgets of about € 12.4 million.

3.1.7 Situation and Assistance, Serbia (see Annex J)

At the start of the IPA period, the Progress Report on Serbia 2007 defined the following to be the key priorities: (i) ensure full cooperation with International Criminal Tribunal for the former Yugoslavia (ICTY); (ii) ensure that the constitution and constitutional law are implemented in line with European standards; (iii) improve the functioning of the judiciary, guarantee its independence, professionalism and efficiency and ensure that the career development and recruitment of judges and prosecutors are based on technical and professional criteria and free from political influence; and (iv) step up the fight against corruption at all levels and develop a comprehensive public system of financial control to increase transparency and accountability in use of public finances.

A key consideration with the introduction of IPA funds was to strengthen national ownership and gradually move towards the Decentralised Implementation System (DIS) for IPA funds. The Serbian European Integration Office (SEIO) acts as the focal point with regards to EU funding, and the Director of SEIO is the National IPA Coordinator (NIPAC). The Development Aid Coordination Unit (DACU) within SEIO tracks overall foreign assistance to Serbia and thus also the IPA funds.

As in other countries, the MIPD 2011-2013 introduced a more sector-based approach to IPA programming, focusing assistance on seven sectors, where justice and home affairs (JHA) – which covers rule of law – was one. The indicative allocation for the three years for JHA jumped quite dramatically to € 75 million. It was based on national programs: the *National judicial reform strategy* (2006), the *Reform of the correctional system in Serbia* (2005), the *National anti-corruption strategy* (2005) and its implementation plan from one year later, the *National strategy for the fight against organised crime* (2009), and related *Integrated border management strategy* (2006) and the *Customs risk analysis and risk management strategy* (2008).

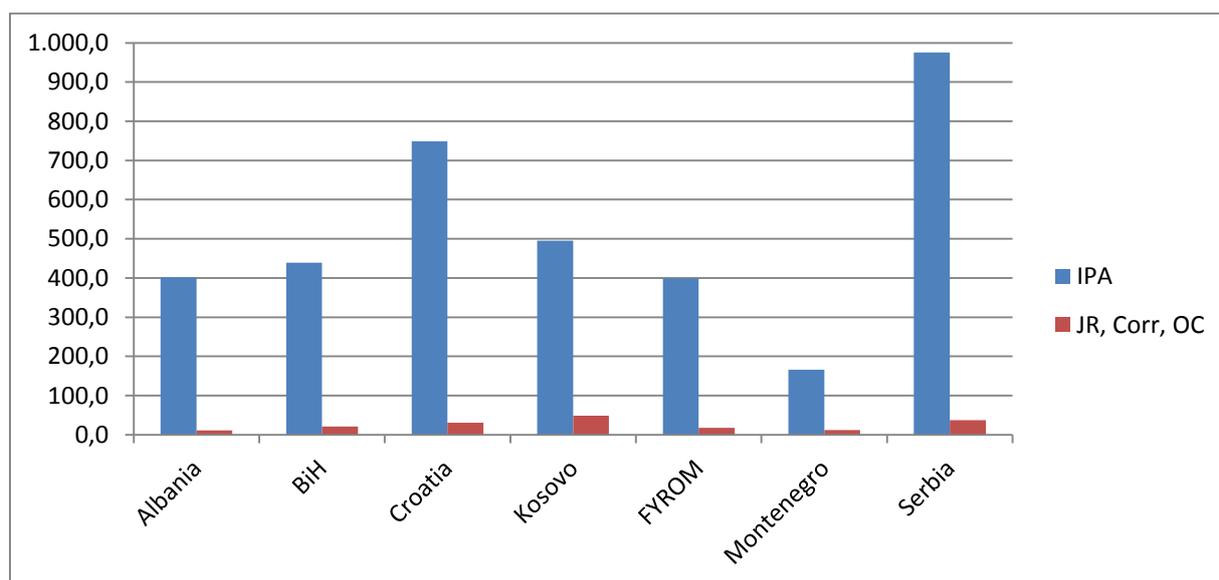
Throughout the period cross-border cooperation was used to promote capacity building and dialogue with authorities of neighbouring countries, including in JHA, with around € 11-12 million/year.

A total of nine projects addressing judicial reform and the fight against organised crime and corruption received just over € 37.1 million from Serbia’s Component I programs 2007-2012.

3.1.8 Situation and Assistance, summing up

Over the five year period that the team has looked at, the EU has provided a total of € 3.624 million in IPA Category I assistance to these seven countries. Of this, nearly € 143 million has been for judicial reform and the combat of corruption and organised crime (see table 3.1 and figure 3.1). *Please note the weaknesses in the data as stated in box 3.1 below, however.*

Figure 3.1: IPA funding and allocations for Rule of Law sub-sectors, totals (2007-2011, € million)



JR, Corr, OC: Judicial Reform, fight against corruption, fight against organised crime

The *shares* of IPA funding going to these fields vary from one country to another, ranging from a low of 2.7% in Albania to a high of nearly 10% in Kosovo, but with the regional average being 5% (table 3.1). The *trend* is towards an *increase* in funding (can be seen in the annexes).

Table 3.1: IPA funding to Rule of Law sub-sectors, 2007-2011 by state, in € million

Albania	BiH	Croatia	Kosovo	FYROM	Montenegro	Serbia	Totals
401.4	438.7	748.4	495.1	399.5	166.2	975.1	3,624.4
11.0	21.5	30.8	49.2	17.7	12.4	37.1	179.9
2.7 %	4.9 %	4.1 %	9.9 %	4.4 %	7.5 %	3.8 %	5.0 %

Source: http://ec.europa.eu/enlargement/instruments/overview/index_en.htm, project fiches (see country annexes).

Just over half of the expenditures in Kosovo are the € 25 million for the new Palace of Justice. When this infrastructure investment is removed, Kosovo is more or less at the same level as the other countries in relative expenditures, so the real “outliers” are Albania on the low side with only 2.7% and Montenegro on the high side with 7.5%. Given the Rule of Law challenges in the region there is clearly a need for further support if all the requirements of the accession process are to be addressed. Two problems are mentioned in this connection. The first is lack of absorptive capacity – the ability of local actors to efficiently and effectively use more resources when some have problems managing the funds they already have. The other is own funding for ensuring continued good utilisation of additional capacities created: there is little sense in building more court houses if operations and maintenance

funds are not allocated locally, or training more judges if the graduates from the training centres are not hired. But it seems clear that absorptive capacities are being improved, in part as a result of the EU support. As for more own-funding to the sector, this reflects the commitment by the national authorities to the Rule of Law. While this seems to be improving in some states, in others it may still be an issue, in which case the EU needs to decide how it wishes to respond to this.

Box 3.1: Data on Rule of Law Dimensions

One challenge the team faced was the funding data available. The team has relied on commitment figures in MIPDs and project fiches, since these are the only data that are easily available for all the relevant activities across the region over time.

More detailed budget figures in the ROM reports could not be used because not all projects are subject to ROM monitoring (none in Croatia, for example). While these numbers are more accurate, they could not be aggregated with MIPD/fiche data for the non-ROM projects since that would mix expenditure with commitment figures: it would be unclear what the aggregate figure actually would represent.

Other issues that make data comparisons difficult include those mentioned above: some of the projects that are large are primarily infrastructure – construction and equipment. This inflates the allocations to the Rule of Law sector.

More difficult is that some projects are fairly broad and contain elements that are not relevant to the narrow “rule of law” applied here, such as equipment for police. So while in some countries the projects are tightly defined, in others they not, which again introduces a “bias” when comparing across countries. The trend is now furthermore towards more broad-based programmatic funding which makes this an even greater problem.

What would have been useful is if disbursement/expenditure data were available on an annual basis broken down at least by the following five categories: (i) physical infrastructure: construction, rehabilitation; (ii) equipment and supplies, for the offices and activities; (iii) funding of project staff (administration, local salaries), (iv) external technical assistance/twinning, preferably differentiating national versus international experts, (v) capacity development activities: training, scholarships, study tours etc. This could generate better insight into trends and linkages between Inputs and Outputs.

3.2 IPA programming: Relevance and Efficiency

For all the country studies, the team reviewed the various programming documents available, tracing the funding allocation process through as shown in figure 2.1 and as explained in the various country annexes. The overarching process and contents are largely the same across countries, though with important differences. Regarding IPA management modes, Croatia and FYR Macedonia are already applying the Decentralised Implementation System (DIS). Concerning the policy dialogue, it is moving so slowly in BiH that the EU had to put in place a new instrument, the Structured Dialogue on Justice, to provide additional assistance to the process.

Below are the general findings regarding the programming of IPA funds before the team concludes with regards to the **Relevance** and **Efficiency** of the IPA programming for Rule of Law activities.

- The EU policy documents increasingly emphasise the contents of the *acquis* chapters 23 **Judiciary and fundamental rights**, and 24 **Justice, freedom and security**, as the “opening” and “closing” chapters in the negotiations on EU accession. This means that Rule of Law concerns are front and centre in the policy documents, which are becoming increasingly specific and prescriptive in the expectations and criteria that need to be addressed.
- There is no real link between the EU’s overarching policy documents and its regional Multi-annual Indicative Financial Framework (MIFF). The MIFF shows allocations across countries and funding

categories but not sectors. The EU therefore does not have a budget instrument for operationalizing overarching *regional* policy concerns.

- While the MIFF provides *funding* frames for national MIPDs, the actual priorities are negotiated at country level based on the policy frameworks. But the MIPDs do not provide strong guidance in terms of what the programme should focus on for what reasons (resource allocation criteria) or what are desired or expected achievements (results criteria, target values).
- MIPDs indicate three-year funding envelopes but the linked-in National Programmes (NPs) only allocate the funding available for the first year (though the projects approved may have multi-year budgets). While all NP projects fit MIPD objectives, actual prioritisations in the NPs are not obvious as there is no justification for the choice of projects and their particular focus as against possible alternatives (counter-factual). Inter-linkages within and between various categories of projects are also not clear, such as the extent to which infrastructure improvements are linked to capacity development activities, are sequenced or conditional.
- MIPDs changed their structure somewhat over the period. While in the first years they were structured according to the Copenhagen criteria, the 2011-2013 MIPDs had moved towards a more sectoral structure (the priorities for Rule of Law support did not change much, however). For 2011-2013, funding thus was made available for more broad-based interventions. While they had to be in line with the sector objectives, at the same time they were less specific and thus could easily be accommodated under quite broad sector objectives.
- MIPDs, as rolling three-year programming tools, basically set the parameters for the particular year that made up its “base year”. While *ex post facto* it can be seen that changes over time were minimal, the annual MIPD process meant that priorities risked being moved around and thus the MIPD did not in fact provide the kind of predictability intended.
- While MIPDs were revised each year, they did not respond much to annual Progress Reports (PR). The PRs would typically raise concerns within the field of Rule of Law, but these were not followed up by specific financial allocations or suggestions for restructuring or re-orienting on-going activities.
- In those states where the Decentralized Implementation System (DIS) is in place, this has been a positive step for the country and led to an increase in the ownership of the programme by the national authorities. Implementation has often posed problems, though, as the DIS-responsible agency is often perceived as bureaucratic, slow and non-responsive to other national actors³.

The country studies then looked at the ***Intervention logic/relevance*** – the extent to which IPA funding addressed the priorities outlined in key enlargement strategic and policy documents:

- In all the states, the formal linkages exist between individual projects and the overarching objectives as laid out in the MIPDs. The issue here is that the objectives are so wide as to allow a wide range of projects to be identified, and thus hardly provide a prioritisation tool.
- Many projects built on achievements attained with CARDS funding, so there was often a continuity of efforts: priorities agreed to over time, such as the building of judiciary

³ It should in all fairness be noted that local procurement bodies managing foreign funding face a daunting task especially in their start-up phase. Criticisms from local actors may in part also be because they were shielded from the donor’s procurement regime and simply received the inputs once they had been purchased.

academies/training centres, upgrading court facilities or introducing ICT into the judiciary (such as electronic case management systems), reflect the fact that EU funding was addressing core concerns in the field of judicial reform.

- The project fiches provide a spelled-out project logic, objectives, and expected results. Over time fiches have in general become more concrete in their results frameworks, providing more and better SMART-type indicators. But while there is always a section that explains the linkage of the project to the overarching objectives, there is no real argumentation for the solution provided – the project is not justified in light of alternatives that have been found less advantageous. The strategic value of the funded project is thus not always easy to see.
- Overall, as seen from *above*, the intervention logic appears quite good: all projects funded contribute to the achievement of objectives. As seen from *below* – are the projects strategic for ensuring that the overarching objective will be achieved – the answer is more ambiguous⁴.
- In countries where there are disagreements between the Commission and the national authorities on for example the importance of addressing corruption or certain forms of organised crime, the projects that are agreed to are not necessarily the most Relevant, but the ones around which it was possible to get sufficient consensus⁵. These project selections cannot be attributed to lack of awareness of the Relevance criterion, so such cases need to be borne in mind when making final assessments.

The **Intervention logic/relevance** of projects selected must be seen as **Moderately Satisfactory**, largely because the possibilities (criteria) for identifying less relevant projects are so weak. If countries would have had sector strategies with prioritised and costed action plans, the question of Relevance would have been easily settled.

When it comes to **Efficiency** of project selection, several issues came up:

- The annual programming cycle of the NPs with funding for limited-period projects (1-3 years) that normally were not inter-linked meant efficiency of programming was considered low: too much time was spent developing stand-alone activities with a limited lifecycle.
- The efficiency was clearly higher on follow-up phases or continuations of on-going and successful interventions. The staff internal to the former project would often be central to formulation, and thus both would have eminent understanding of the project and its environment, the challenges and opportunities that further support could exploit, but also would typically have some “champions” who would argue for and take ownership of the project. Overall transactions costs for getting the project identified, programmed, approved and moved to implementation would be low.

⁴ The Kosovo study did a more careful review of the projects, classifying them as having High, Medium or Limited Relevance. The Kosovo study, however, started from a universe of all Rule of Law projects that included funding for border control, asylum return etc. In the other country studies, such projects had been weeded out to begin with so that only those projects that were *a priori* Highly Relevant were in fact included. A much trickier issue, which neither the Kosovo nor the other studies address, is go down to activity level to see if selection of actions really address core objectives – often the “relevance slippage” only appears at this level of detail.

⁵ And even formal agreement may not be sufficient: in BiH agreements were reached about support to the Anti-corruption Agency – which everybody agrees is a highly Relevant project from all perspectives – but it has not become really operational due to lack of the promised local financing and political support.

- New projects often faced major efficiency challenges: the demands for clear specifications of equipment to be procured at an early phase of the programming meant that by the time the project became operational, the needs for the equipment might have changed, the technical specifications were obsolete, procurement constraints meant that the hardware-software configuration that was desired could not be had, etc. In *all* the countries visited there were strong complaints about long lead times for implementation. The lack of flexibility for restructuring and changing specifications was seen as a major headache.
- For organisational development projects in particular but Rule of Law activities in general, the limited-time horizon for support to core actors was seen as dysfunctional. Building or restructuring a court system, modifying a law tradition, changing the principles of policing or how to deal with sophisticated criminality requires long-term support and guidance. A key reason twinning projects were seen as positive was that while they may take somewhat longer to prepare, once they start up the continuity of support seems more guaranteed.
- In countries with stronger own capacities, efficiency of project selection, preparation and moving to implementation appears better, though the factual basis for this assertion is admittedly largely hearsay.

The **Efficiency** of project selection/programme development seems to vary considerably, depending on (i) country differences such as general capacity levels in-country or in the intended beneficiary institution, (ii) whether the project is a stand-alone activity or a continuation of an already successful intervention, (iii) whether the project has a strong “champion” or not, (iv) whether it is politically controversial or not.

All of these factors can be seen to be “exogenous” to the project, and known, and thus in principle can be taken into account when programming takes place, to see how possible threats to Efficiency can be addressed.

3.3 Other Lessons on Rule of Law Interventions

The team was to review “lessons learned” from other studies on support to Rule of Law in the region. The first observation to be made is that the actual number of evaluative studies from the region is surprisingly small, especially given the importance a number of actors claim they attach to this field.

The team therefore elected to include a wider range of studies, including more traditional results reports from key implementing bodies, as they also provide some insights into “what works, what doesn’t, and why”.

Deloitte (2008) “Ad-hoc evaluation of the CARDS regional programmes in the Western Balkans”, Final Report, December 2008.

Management and learning process DG ELARG adopted a more participative and coordinated approach to designing the regional programmes, following the recommendations from the previous evaluation (2004).

Regular multilateral meetings with the EC, EC Delegations and stakeholders are now held, especially in the context of programming. This consultation process has been further strengthened in the new financial period and the Multi-annual Indicative Programming (MIPD) as foreseen by the new pre-accession financial instrument IPA. Countries are now taking part in a participatory way in the preparatory work and are discussing their priorities in a regional environment.

The CARDS regional programmes can be described as a learning process on both sides: the Commission has started involving countries more in its decision making process and to identify the hindrances that prevent countries from fully exploiting the support provided. Countries have also realised that tackling problems under the regional framework has its advantages. This learning process is still on-going and in some areas the regional programmes are still seen as a second-best solution compared to the national programmes.

The CARDS regional programmes have to strike a balance between different degrees of administrative capacity: while some of the countries-entities involved can rely on well-shaped and long-standing institutions, in other countries-entities the institutional framework is still extremely weak. Instruments like TAIEX can play a positive role in addressing specific training needs and to build up administration skills in countries-entities lagging behind others.

- Absorption capacity varies greatly across the different countries-entities of the region and across areas of intervention, and national administrations often struggle to deal with all the reforms undertaken;
- CARDS regional programmes have generally complemented the national programmes;
- Regional ownership and cooperation has improved and regional solutions are in the process of being developed;
- Networking and the share of best practices have an impact on the national administrations of the region, especially on the weakest ones;
- Trainings and seminars are actively building up the administration capacity in the region. The project design capacity is also being strengthened;
- Sustainability is still rather weak but is improving. An exit strategy from the assistance logic is needed in those areas where countries are deemed able by the Commission to stand on their own feet.

ECORYS Research and Consulting (2011), Evaluation Twinning versus Technical Assistance, Final Report, Rotterdam, 26 January.

EU's criteria for twinning remained valid: (i) the assignment should be related to the EU body of knowledge (the "supply institution" needs to be a "centre of excellence" in its field), (ii) the partner organisation should be mature: an established institution that has a clear idea of how it intends to evolve, and (iii) the partner organisation should have the capacity (staff, space, skills including language skills) to effectively cooperate with the twinning partner. In all other cases stand-alone technical assistance (TA) is preferred.

The study found that past experience of the partner agency is important: if it already has experience with twinning it is more likely to work also in the future. Twinning was furthermore more likely to succeed when there were other bodies that were engaged in or had experience with twinning (presumably due to peer learning), that the overall maturity of the society mattered ("absorptive capacity" was good) and that the larger societal frameworks were conducive to twinning, such as pressures to perform and an overarching political will to succeed – becoming a member of the EU was clearly a strong "driver" for results (ibid p. xii).

Some practices dilute the assumed unique features of twinning compared to TA: (i) TA providers appear also to be able to deliver *acquis*-relevant expertise; (ii) twinning providers sometimes use

retired and not necessarily relevantly skilled employees as RTAs; and (iii) some mandated bodies operating under twinning contracts have in reality a TA profile.

The assumption that twinning may result in lasting contacts with a counterpart institution' in an EU member state, may not always be realised.

Overall, in terms of budget and number of projects, TA as instrument still prevails in all sectors, but in some sectors, like 'justice and home affairs', 'agriculture and fisheries' and 'finance', twinning accounts more and more for a significant share of the accession support. This is a logical result of the 'acquis' criterion in the selection of an instrument. Essential for success of a project is a good personal relation between beneficiary organisation and experts. Twinning providers from the NMS are especially appreciated, because of their recent and relevant experience, and good understanding of the background.

Other factors for success apart from the proper selection of an instrument are (1) common understanding of the project and a good division of responsibilities; (2) refraining from imposing a solutions; (3) realistic objectives; and (4) provider should have understanding of background and environment of beneficiary organisation.

A number of practical and justifiable criteria is used for the selection: twinning is suitable for public bodies, *acquis* related assignments and for organisations which have sufficient capacity and awareness to handle the twinning burden. Normally, no formal cost-benefit analysis is part of the selection process.

Cost-differences between both instruments, although TA is nominally more expensive, do not justify an adjustment of the selection rules. These differences are overshadowed by differences in efficiency, i.e. time necessary to start operations or to adjust work plan etc., which are seen as cumbersome under twinning.

The fact that it is generally assumed that less mature beneficiary organisations are not in a good position to absorb twinning advice, does not mean that these organisations would obtain second-rate support: TA is generally seen to be equally effective as and more efficient than twinning.

Strong points of twinning however remain its possibility to foster relations between institutions in the EU and in the (potential) candidates, as well as a change in working culture. TA on the other hand appears to be more efficient, flexible and easier to control.

The projects in the sample studied scored above average on impact, effectiveness, efficiency and sustainability. There was no significant difference between projects using twinning or TA, not overall and neither in the individual sectors. There are a number of critical factors for success, human chemistry between providers and beneficiaries being one of the most important. Others are: common understanding, good division of roles, no imposing of solutions, and good knowledge of the background by the provider. The latter also explains the success of the NMS as twinning providers;

Just as important as the selection of an instrument is the selection of the provider. Especially the involvement of mandated bodies too far from the public administration instead of 'regular' public bodies may threaten the realisation of intangible benefits such as relations with 'sister-institutions' in the EU.

Open Society Institute (2002a), "Monitoring the EU Accession Process: Judicial Capacity"

The study covers Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia. It provides a definition of judicial capacity as incorporating four mutually

reinforcing notions: independence and impartiality; professional competence; accountability; and efficiency.

Effective training for judicial candidates and judges is the most direct way to enhance their capacity for impartial, competent and efficient adjudication. Lack of adequate training may lead to poor performance and may even make judges vulnerable to influence. On the other hand, well-designed training not only increases judges' core adjudicative skills, it can also help make judges more responsive and accountable by reinforcing a proper understanding of the judge's role in society.

The importance of judicial training has been recognised by the European standard-setting instruments, which declare that States should ensure initial and continuing judicial training at State expense. The European Charter on the Statute for Judges further provides that any authority responsible for ensuring the quality of training programmes should be independent from executive and legislative powers and draw at least half of its membership from among judges. It also indicates that judicial training should extend beyond technical legal training to include social and cultural knowledge.

All the candidate States provide judicial training in one form or another, and increasingly, judges have substantial influence over planning and implementing judicial training. In general, however, the level of public and political understanding of the role training plays is weak, resulting in a lack of adequate resources, limited institutional capacity, haphazard planning, and a narrow, technical approach.

Stable and sufficient funding is perhaps the most decisive factor for ensuring a programme of sustained training. Inadequate funding – the most direct reflection of weak political commitment – makes strategic planning, institutionalisation, and professionalization of judicial training very difficult. Given the poor funding levels, it is unsurprising that institutional capacity to provide quality judicial training is also generally limited.

Open Society Institute (2002b), "Monitoring the EU Accession Process: Corruption and Anti-Corruption Policy".

This study covers the same ten states as the previous one. It begins by noting that the EU lacked benchmarks for assessing corruption in member States, related to a more fundamental and ongoing debate on an operational definition of corruption. It notes that the EU anti-corruption framework remains diffuse and largely nonbinding. There is a lack of quality information and research on corruption, and the inevitably long-term nature of effective anti-corruption policy has not really been embedded in the policy dialogue.

The transition economies faced a number of factors that combine unfavourably to encourage corruption, while simultaneously rendering corruption control especially difficult:

- Inherited bureaucracies lacked many of the regulatory institutions necessary for a modern State and economy to function, as well as many of the conditions necessary for mechanisms of accountability to function.
- Political and economic liberalisation subjected politicians to a wide range of pressures, many of which are corruptive.
- Civil society, which to varying extents was destroyed or excluded from public life under communist regimes, tends to be weak in transition States and less likely to play a part in fighting corruption.

- Due to economic concentration, the weakness of civil society and the competitive pressures of transition, the private sector is less likely to actively support reforms to limit corruption, even when businesses are highly frustrated by corruption.
- In this environment, corruption has become in many cases a highly politicised and useful weapon in the political struggle, which may in certain circumstances lower the legitimacy of the system more than it harms the legitimacy of individual corrupt politicians.

The key recommendations to the EU were:

- Much more research on corruption in candidate States to identify the real loci and causes of corruption on a sector-specific basis. Such research might be carried out directly under the auspices of the Commission itself, but – given the limited formal mandate of the Commission in the area of corruption – is at present more likely to come from other international organisations such as the World Bank, EBRD, OECD, and civil society organisations.
- The EU lacks a framework of anti-corruption standards or a mechanism for monitoring adherence to such a framework.

The key recommendations to candidate countries were:

- Pay more attention in public procurement reform to measures designed to ensure the integrity of public procurement officers, rather than designing procedures that can be circumvented anyway and hamstringing good officials.
- Ensure independence of broadcasting regulators as much as possible, most likely through provisions defining strictly which organisations have the right of representation in the regulator.
- Devise Codes of Ethics in public administration through a consultative process that enables officials to regard such codes as their own rather than as imposed from above.
- Sponsor education and public awareness initiatives on corruption to make citizens aware of their rights and encourage the development of a culture more resistant to corruption.

Council of Europe (CoE) (2006-2009), “Support to Prosecutors’ Network in South-eastern Europe PROSECO”, various progress reports.

The CoE strategy is implemented through three inter-related elements:

- Setting European standards,
- Monitoring compliance with European or other international standards.
- Technical cooperation aimed at building capacities to enable countries to ratify and implement relevant standards or to follow up on recommendations resulting from monitoring exercises.

In 2009, implemented about 400 activities under 13 projects. Total budget more than € 24 million with estimated expenditures in 2009 amounting to some € 6 million.

The effectiveness of CoE projects against economic crime is due to their symbiotic relationship with standards (conventions or soft-law recommendations) set by the organisation that establishes benchmarks, and monitoring mechanisms that evaluate compliance with these standards and adopt recommendations to a given country, backed up by continued policy dialogue. An added value of the CoE has also been the ability to respond to emerging needs (flexibility).

CoE projects are cost efficient when compared with technical cooperation projects carried out by bilateral organisations or consulting firms, and effective through their links to standard setting and monitoring activities. However the CoE's internal reporting and administrative requirements increased considerably between 2007-2009 which reduces the time available for proper project management and the delivery of results. Personnel and administrative cost are becoming too high in relation to the operational budget of projects, and the CoE risks to become non-competitive.

The co-operation of National Contact Points has been reinforced. National Contact Points of the Prosecutors' Network have highlighted the efficiency and value of the project, and an amended MoU that has reference to a number of CoE conventions will enhance possibilities for direct co-operation.

The availability of explanatory reports on conventions in the field of international cooperation in the languages of project areas provides a useful tool that will help to enhance co-operation further and render it more efficient

CoE: Programme Against Corruption and Organised Crime in South-eastern Europe, Implementation of anti-corruption plans in South-eastern Europe (PACO IMPACT)

Overall intervention logic:

- Develop regional strategies and benchmarks
- Develop country specific implementation tools and fields of crime
- Develop test, and produce training materials in local languages to support the implementation strategies
- Review progress made in the implementation of strategies and thus in progress made towards EU acquis and European standards and practices.

In the just over three years of project activities, they organised 46 regional events – seminars and workshops; 16 study visits; 86 in-country seminars, workshops and training events with over 2300 police officers, financial police/FIU officials, customs and tax officials, judges and prosecutors.

- Assessing the results of the project against its agreed outcomes, the project has achieved its main objectives. Sustainability of many of the interventions will become clear in the medium- to long-term future. Though changes might be forthcoming very slowly, it does not question the rationale of the interventions. The reforms necessary are often painful and unpopular, and it does need an outside player such as the CoE to constantly and consistently pressure for change.
- Key anti-corruption policy documents to support the implementation are in place in all project areas. Although policy papers and operational documents have been drafted with PACO IMPACT assistance, primarily provided through expert input to the drafting process, the main driving force were the project areas' authorities themselves. This appears to be an important shift compared to earlier years of technical assistance provision in this area, and it holds promises for the sustainability of the reform process underway. A major reason for this shift is the growing importance that anti-corruption measures receive in the framework of assessing countries' readiness to join the European Union, thereby having a concrete incentive to implement relevant reforms.
- PACO IMPACT has facilitated a number of original initiatives with potential relevance for the whole region. The project was able to accommodate and realize ideas coming from the beneficiary regions themselves, ranging from the purchase of material equipment to upgrade the

work of relevant anti-corruption institutions, to the development of specific training materials and the conduct of a public awareness campaign.

- The project has tried to make intensive use of regional experts (as opposed to Western experts), not least as they were able to bridge the language barrier, but also because it was felt that there was sufficient knowledge available locally, and that solutions would be easier accepted and adjusted if they weren't seen to be coming from the outside regional setting.
- All project areas have policy documents in place that guide their anti-corruption reform efforts. PACO Impact has been crucial in putting these documents into place;
- The need for effective and efficient monitoring of anti-corruption strategies and action plans has been acknowledged by all project areas. PACO IMPACT has helped increase the capacities of project areas to meet this need;
- Pilot activities have been able to respond to project areas' specific needs, often providing a material improvement of the working conditions of anti-corruption agencies.

Problems identified

- Lack of inter-institutional co-ordination and co-operation
- Lack of properly functioning and fully operation Anti-Corruption task force (a number of the states pointed to lack of staffing that were directly related to PACO IMPACT)
- Complex institutions causing delays (BiH, Kosovo)
- Insufficient public awareness
- Efficient implementation of existing relevant legislation only possible if political will and support is ensured
- Need for mandatory tools and protocols for the submission of information between relevant agencies on national and regional levels
- Need for stronger legal and operational capacities to efficiently conduct cyber-crime investigations
- Need for specific legislation on interception which would have to include clear guidelines on categories of criminal offences that could be subject of special investigative measures
- Need for governments to increase support to the law enforcement and prosecutorial services by allocating special budgetary resources for operations and education

CoE: Organised Crime Situation Report 2005

Increasing number of countries report economic crime as organised crime. Correlations between economic and organised crime are rather strong, and both share some characteristics.

- Corruption remains a key issue in Europe and an important factor facilitating organised crime as well as economic crime.
- After 2004 organised cybercrime has exploded.
- Economic crime levels are a reflection of (a) motivations and skills, and (b) opportunities, which are affected by governmental, media, and public vigilance. Thus, regulatory frameworks do have an impact on economic crime.

- Further problems that need to be addressed are related to the vulnerability of civil servants and parliamentarians (at national and intergovernmental levels) to the buying of decisions regarding regulations that affect business interests. Crucial questions in this respect are (i) Where are the boundaries between legitimate lobbying and undue influence and corruption? (ii) How can economic criminals be prevented from capturing democratic institutions and processes?

The 2003 Organised Crime Situation Report noted that a substantial part of organised crime groups are increasingly turning to various counter measures to minimise risk of law enforcement such as:

- Shielding activities by making use of legal business structures in criminal strategies, and using more complex money laundering mechanism.
- Corrupting, intimidating and influencing key persons in public administration, politics and business community.
- Improving and professionalising their organisational structures.

World Bank (2002), “Legal and Judicial Reform Observations and Experiences”, Legal Vice-Presidency, July.

The conclusion is only a paragraph long and to the point:

Equitable laws and effective justice are sine qua non for sustainable development and lasting poverty alleviation. But remedies are not easy. Solutions are long-term and complex, measures often encounter entrenched power and the issues are elusive and intangible. Thus, law and justice activities must be approached comprehensively, assessed carefully, identified specifically and implemented over a long period with the full commitment of the stakeholders in the countries. To accomplish this, the Law and Justice Group must bring together world-class knowledge, enjoy cooperation and collaboration of all development partners and have adequate and effective instruments. The demand for activities aimed at improving the rule of law in our member countries is clearly immense. The Law and Justice Group intends to use innovative pilots to break new ground, and then identify successful activities and replicate them; and work closely with other donors engaged in this field so as to ensure that our activities are done in the most efficient way possible.

World Bank (2006), “Rule of Law Reform in Post-Conflict Countries”, Conflict Prevention and Reconstruction Paper 37, Operational Initiatives and Lessons Learnt, October.

The paper reviews some of the key lessons to have emerged from the last two decades of rule of law experience in fragile or post-conflict countries.

- Donor community come in with a multiplicity of uncoordinated actions and projects, confusing what is already a very complex and difficult sector
- There is a lack of coherent strategy, lack of coordination, crisis style responses and ad hoc reactive projects.
- Fundamental problem: the goals sought to be achieved are extremely complex and there is little clarity on how to best proceed.
- Urgent need for more systematic discussion of how institutions evolve and how they can become self-enforcing.
- Been a strong focus on tangible and more easily quantifiable changes, such as buildings or computers. Rebuilding infrastructure is a readily identifiable mark of progress therefore often

favoured over more long term and difficult capacity building. Infrastructure projects can only have a limited impact where political and economic incentives are the key reasons for the non-existence or weakness of the rule of law.

- Striking lack of coherent and systematic studies evaluating rule of law programming, especially independent rigorous cross country evaluations, or comprehensive case studies of all the rule of law programs in a country.
- Also a lack of relevant justice sector capacity development expertise.

Box 3.2: Reform of the Ministry of Internal Affairs (Mol) in Georgia

Before the “Rose Revolution” in Georgia in November 2003, the Mol was a Soviet-style structure whose mission was to defend government authority. Mol had connections with organised crime and corruption within the police and other state organs was deeply institutionalised.

The newly elected Government (2003) dismissed a large number of police officers (16.000) particularly among the traffic police considered as the most corrupt department. Salaries were increased from approximately 35-40 Euro to approximately 150-200 Euro. New buildings and equipment (cars) were provided as well as new internal procedures and training. These visible measures took place within a larger reform including among other new regulatory framework, adoption of international police standards, new operational procedures, new recruitment and training policies, merit based promotion, and the creation of external and internal oversight mechanisms. The initial impact was seen to be

- Dramatic decrease of street level corruption as experienced by the population (surveys)
- Dramatic increase of the trust of the population towards the police (surveys)
- Dramatic reduction of corruption (as measured by Transparency International and the World Bank Freedom of Business index)
- Increase of police efficiency

Key success factors:

- Strong political commitment: the reform of the police was a priority of the new government;
- Support from the population: targeting the highly visible petty corruption of daily life led to strong support by the population for the reforms;
- Support from international community: the EU, the OSCE, the US and most of the international community supported the reforms. The EU supported via its Rule of Law mission EUJUST; the US financed infrastructure and equipment, etc. – there was a well-coordinated international response to a clear government programme.

See http://polis.osce.org/countries/details?item_id=70&lang=ru and <http://www.u4.no/publications/police-reform-in-georgia-cracks-in-an-anti-corruption-success-story/>

World Bank/IFC (2010), “Alternative Dispute Resolution Program (ADR) in the Western Balkans: Giving Mediation a Chance”.

The Alternative Dispute Resolution program was started in 2003, goal: providing companies in the region with a quicker and cheaper option for resolving commercial disputes through mediation, in Albania, Bosnia and Herzegovina, FYR Macedonia, Montenegro, and Serbia.

Companies seeking court resolution in court waited on average 501 days after navigating 30-40 bureaucratic procedures and incurring onerous legal fees.

IFC ran two pilot projects in BiH, followed by two pilot projects in Serbia. In the first year, IFC focused on assisting the governments and legal institutions in developing and reforming their legal frameworks, a prerequisite for broad introduction of mediation. IFC trained a large group of mediators, which formed the core of the local organizations of mediators, and established a regional network of mediation centres, all the while facilitating a comprehensive public awareness campaign.

More than 3,000 disputes have been mediated successfully since the program's onset. The average number of days to settle a case through mediation is 28. To date, mediation has freed more than \$100.1 million in disputed funds with a 75% success rate: "*Mediation has radically shortened the procedure and saved us a lot of money. Thanks to open communication — without impeding legal restrictions and formalities — we were able to reach a mutually satisfactory solution in less than two hours*" (director of small business in the Western Balkans)..

3.4 Findings and Conclusions

Based on the literature review above, some of the more relevant findings for this task are:

- The studies from the transition countries (OSI 2002 a/b) identify virtually the same problems as are to be found in the Western Balkans ten years later. Some of the weaknesses in the international community's response have not changed too much either: lack of precise knowledge about the nature of complex problems; lack of clarity on what the success criteria are, both to the partner country for own performance tracking, and for the EU for its monitoring purposes⁶.
- The inter-linkages between corruption in the public sphere – particularly driven from political actors – and organised crime is obvious and strong across the region. The crime is becoming more sophisticated in its form and organisation, and using modern business instruments to shield activities from insight and assets from seizure. The increasing pervasiveness of crime in terms of trying to intimidate and influence the judiciary, "clean" private sector actors etc. are of considerable concern.
- Justice sector reform, despite being a complex and difficult area, has historically been subject to a lot of short-term and uncoordinated support, where a focus on visible results has provided a bias in favour of infrastructure and equipment provision rather than structural and long-term capacity development programmes.
- There is a lack of in-depth and research based knowledge about corruption, organised crime, how they interact, their inter-linkages and vulnerability points in the different settings, and thus a lack of insight into what are the best approaches for addressing these problems⁷.
- When activities become based more on local (regional) participation and expertise, results often improve: the political, historical, linguistic/ethnic, geographic proximity provides many important "bridges" for transmitting lessons. The reporting on peer learning in regional programmes point to important achievements, and especially weaker administrations have been able to learn and

⁶ There are two different issues that need to be addressed: a specification of the success criteria – which in this case would be linked with achievement of the requirements of chapters 23 and 24 – and the measurement of attainment. While the latter is always a challenge, innovative survey techniques, use of social media etc allow for much more cost-efficient monitoring than some years ago. There is also an increase in local skills available for carrying out and analysing such data.

⁷ While a number of recent members of the EU underwent a turbulent transition process from a centrally planned economy to a market-oriented one, with at times quite murky privatisation processes, the Western Balkans also have the legacy of the armed conflict that has added layers of complexity and non-transparency in terms of centres of power. Another issue is the role of the old intelligence agencies that were often very powerful instruments of control. The degree to which such agencies have been reformed and now serve purely democratic and transparent interests presumably varies but may represent a factor regarding support for Rule of Law progress. – Another avenue is to look at the effects of current RoL through victim-surveys, users of the various instruments of the state (courts, other redress mechanisms like ombudsmen), media etc to map out what the state of RoL is perceived to be, and what are experienced consequences of the current situation.

develop their own capacities faster (“the benefit of the late-comer” – not having to go through all the technology cycles but can appropriate the latest one directly)⁸.

- The importance of training of large numbers of staff is noted as important, both to transmit technical knowledge widely in an organisation but also to inculcate values and standards – “corporate culture”. In this connection, the ability to provide clear standards and assist local actors to translate into own language (a small but very important value-added) has been critical for introducing and embedding such standards in the laws, regulations and standards in the various countries in the region.
- The choice of technical assistance versus twinning arrangements has recently been looked into. While there are trade-offs, a key issue is the quality and commitment of the supplier organisation, where the two alternative *models* may not be all that different in practice. What is seen as an important difference is in areas regarding the *acquis*, where twinning with a similar institution in a member state may carry important advantages, and the prospect of longer-term relations with a twinning partner also plays a role.
- There is some attention to alternative dispute resolution mechanisms, but the focus is very much on formal enforcement through the instruments of the state as the legal tradition in the region is for even minor infractions – traffic violations, unpaid utility bills – to go before a court. This is tying up significant parts of judiciary system capacities across the region that could be addressed through much more transaction-efficient mechanisms.

⁸ The reviews/reports on regional programmes all note these factors. It can also be seen in things like Slovenia and Macedonia being the first in the region to define the legal and institutional frameworks for fighting corruption, whose experiences and expertise are now being used by several of the other states in the region.

4. Judicial Reform

Judicial Reform can be seen as the complete or partial reform of the structure of a country's legal system (independence of the courts, clarity in division of responsibilities between different actors in the legal process); the laws, rules and regulations that govern society; the court structure; procedures for prosecuting, sentencing, appeals and execution of sentences; training, selection, empowerment and disbarment of judges and prosecutors; the management of the courts, record keeping, case materials, proofs, and overall fiduciary probity of the legal system; and in general how the doctrine of the separation of powers is upheld through transparent and accountable roles and rules.

The independence of the court system is a particular concern throughout the Western Balkans. The threat to this independence comes from several sides. From the state it is primarily through the control of the budget for the court system, and/or the appointment or termination of judges and prosecutors and finally in exerting political pressure in specific court rulings. From the private sector it is through the buying or influencing of legislation and/or outcomes in court cases, though this issue seems to be of much less concern in the region than the threat of state interference and influence.

This chapter first presents the situation facing judicial reform across the region (section 4.1), looks at the assistance provided (section 4.2), before looking at the results achieved (section 4.3). The chapter ends by summarising the main findings and conclusions (section 4.4).

4.1 Situation

One trend that has become clearer over the last decade is that the various states in the Western Balkans are following different trajectories in the speed and depth of their Rule of Law changes.

One particular dimension concerns the development of accountability of the state to the citizenry. The role of civil society and business, freedom of expression and access to information, independent media, and overall basic human rights are being impacted by RoL changes. But these societal forces are also expected – and needed – to play important parts in ensuring implementation of judicial reform. The extent to which these societal vertical accountability mechanisms are being strengthened and applied has become an increasing issue in the Rule of Law debate in most of these societies.

4.1.1 Albania

Judicial reform is considered a key priority and the 2012 Progress Report notes moderate progress (p.10). The adoption of the Law on Administrative Courts and of the Law on the National Judicial Conference and the Law on the Profession of Lawyer represent positive steps forward. Furthermore, the Judicial Reform Strategy and the Action Plan 2011 provide for good basis for the implementation of reforms in the judiciary.

The 2012 Report also notes some progress in regards to independence and impartiality while the reform of the Laws on the High Court and the Constitutional Court have not been adopted.

The Computerised System of Management and random allocation of cases should be enhanced and cover all courts. The Courts have separate budgets but the budgetary appropriations remain insufficient so there is lack of human and financial resources. Investigation of corruption cases in the judiciary was prevented by the full immunity of judges, which is seen as a major problem. However, good progress in fighting corruption in the judiciary was made with the constitutional reforms limiting the immunity of judges (Progress Report 2012 pg.12). The adopted legislation now is in place and

should be implemented to address allegations of corruption in the judiciary. It is a continuous remark that enforcement of court decisions should be enhanced as it remains weak.

There has been limited progress regarding access to justice. The legal aid commission was set up, by-laws have been adopted, but the law remains to be fully implemented. Some limited progress can be reported as regards implementation of anti-discrimination policies with the Office of the Commissioner for Protection from Discrimination organizing a number of awareness-raising activities and training events. So while there are efforts to develop legislation in judicial reform, the most important challenge, though, is the implementation of legislation.

4.1.2 Bosnia and Herzegovina

The structure of the judiciary reflects that of the country, with courts at municipal, Cantonal (FBiH), district (RS), Entity and State levels, Brčko district having a separate court system. There are hence four jurisdictions: Brčko district, the two Entities, and the State, with three different bar exams, an incoherent system of laws, and directives issued by 14 ministers of justice (Progress Report 2007). The country lacks a single Criminal Code and Criminal Procedures Code. The change from an inquisitorial system based on civil law traditions towards an accusatorial (adversarial) system more frequent in common law traditions is causing major transitional costs. The understanding and application of the new approaches but also changes required along dimensions such as better collaboration between police and prosecutors are taking time to get in place (relevant also for Croatia, FYR Macedonia, Serbia).

Court administration matters largely fall within the purview of the High Judiciary and Prosecutorial Council (HJPC), which is seen as a modern and efficient body. But the court system faced a huge backlog of about 2 million cases at the time of IPA funding being programmed in 2006, most of these linked to unpaid utility bills. While a significant number of cases have been resolved, the continuous influx means that several years are required before the backlog will be addressed. The electronic Case management System (CMS) is providing better tools for addressing this issue.

The prosecution of war crimes has become the top priority for the judiciary, with a National War Crimes Strategy adopted in December 2008. The War Crimes Chamber of the Court of BiH and the Special Department for War Crimes of the Prosecutor's Office of BiH are seen as efficient bodies, but the responsible bodies at the Entity level generally lack the capacity and resources to address such complex cases. But the final conclusion is that *"the development of an impartial, independent, effective and accountable judiciary in line with European standards remains at an early stage.... 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 remain causes for serious concern"* (Progress Report 2011, p. 13).

4.1.3 Croatia

In the 2009 Progress Report, the Commission applauded Croatia's introduction of new legislation and organizational changes for reforming the judiciary and for fighting corruption and organized crime. The Office for Combating Corruption and Organised Crime (USKOK) was seen as increasingly active. The *Judicial Reform Strategy* (JRS) has been key to the further reforms, with the Ministry of Justice monitoring the implementation of its 2008 Action Plan, with over 85% of reforms so far carried out. A new JRS for the period 2011–2015 is now in place.

According to the PR 2011 there has been good progress, with a large volume of legislation adopted, the independence of the judiciary has improved, amendments to the Constitution and the laws on

courts have led to establishment of the State Judicial Council, State Prosecutorial Council, State Attorneys Offices and the Judicial Academy. Progress has been made as regards the professionalism and competence as well as efficiency of the judiciary by establishing the Judiciary Academy, the new court system and mediation. The Integrated Case Management System is expected to be in place in all of the planned 103 courts by the end of 2012.

The system of judicial inspections has produced good results, with the number of inspectors increased. There has been continuing progress with the application of the new Criminal Procedure Code, which was further fine-tuned in July 2011. Applied to organised crime and corruption cases since 2009, the new criminal procedure has accelerated the investigation and the prosecution stages, with better cooperation between the police and prosecution services leading to more indictments.

4.1.4 Kosovo

In the field of judicial reform, important legislation has been passed. Administrative improvements took place within the Ministry of Justice. The Kosovo Judicial Council has started addressing key priorities and the Kosovo Prosecutorial Council has started to function. Salaries of judges and prosecutors were increased and a careful process of vetting of judges and prosecutors was successfully implemented.

Despite these steps forward, the judicial system in Kosovo remains weak. Significant backlogs of cases persist. Judges face threats and intimidation; political interference in the work of the judiciary is still an issue of concern. Prosecutors and judges are often not investigating and adjudicating organised crime and corruption cases. The European Union Rule of Law Mission (EULEX) has an important executive power to tackle high level cases of corruption and organized crime..

4.1.5 Former Yugoslav Republic of Macedonia

The 2012 Progress Report notes that the legislative and institutional framework is in place though further efforts to guarantee independence and impartiality in practice are needed (pg.11). The 2011-13 MIPD also stated that the legislative framework of the judiciary is mainly in place though further strengthening of the efficiency and independence, recruitment procedures for graduates of the Academy is needed (p.10). The National Program for Adoption of the Acquis 2011 also points to the need for strengthening the independence and impartiality of the judiciary as well as the increase of efficiency and professionalism. A comprehensive judicial reform strategy is yet to be developed.

Programming of the funds is based on the priorities established in the Accession Partnership, the National Programme for the Adoption of the Acquis, the EU Progress Reports, the Strategy for Reform of Criminal Legislation 2007-2011, National Action Plan for Implementation of the Penitentiary System Reforms Programming based on the priorities 2009-2014 (MIPD 2011-13 p.18). The MIPD 2011-2013 focuses in implementation and proper enforcement, further efforts in criminal procedure and prison reform, police reform, fight against money laundering, and organized crime (ibid p.10).

4.1.6 Montenegro

The judicial system in Montenegro is organised as a three-instance court system, with 15 basic courts, two High Courts, an Appellate Court and a Supreme Court. It includes two Commercial Courts and an Administrative Court. The Constitutional Court consists of seven judges who are elected by parliament for a period of nine years. It decides on the conformity of laws with the Constitution and with ratified international agreements and on whether the President has violated the Constitution.

The Judicial Council administers the judiciary. It has a President and nine members. The President of the Supreme Court is the President of the Council, and the Minister of Justice is also a member. The Judicial Council is the body responsible for selection, appointment, promotion, dismissal and disciplinary measures concerning judges. Similarly, the Prosecutorial Council has a President and ten members, where the Supreme Public Prosecutor is President of the Council. It is responsible for appointment, promotion, dismissal and disciplinary measures concerning deputy prosecutors.

Despite improvements in recent years in the legislative framework for the appointment of judges and prosecutor, this still does not sufficiently ensure the independence of the judiciary. The merit-based elements of the career system need to be substantially strengthened and a country-wide single recruitment system remains to be established. Concerning the impartiality of judges, rules on conflict of interest and a code of conduct are in place, but the rules for random allocation of cases do not yet guarantee genuinely random case allocation, particularly in smaller courts.

Corruption and conflict of interest rules are still insufficiently monitored in the judiciary. Both judges and prosecutors continue to enjoy functional immunity from prosecution, which is of concern.

The final conclusion in the 2011 Progress Report is that *“Montenegro has made some progress in this area, notably as a result of its efforts to address the relevant key priorities set out in the Commission Opinion. Further sustained efforts will be needed to align with the acquis in this chapter, in particular to implement and enforce it effectively in the medium term. Further strengthening of administrative and implementation capacity is needed”*.

4.1.7 Serbia

The 2007 Progress Report noted that the main challenges in Serbia were to (i) ensure the full independence of the courts and prosecution system and strengthen the office of the prosecutor for war crimes; (ii) implement the action plan on the judicial reform strategy; (iii) adopt and implement legislation on mandatory initial and continuous training for judges, prosecutors and court support staff and strengthen the training centres; (iv) rationalise the court system, modernise proceedings, introduce an effective court management system and establish administrative and appellate courts; and (v) create an IT network for prosecutors at all levels, ensure enforcement of court decisions and further strengthen the capacity to try war crimes domestically in full compliance with international obligations to the ICTY.

The impartiality of judges has in general terms been strengthened over the subsequent period, due to automated allocation of court cases, which has now been introduced in all commercial and general courts. New case management software has been introduced in the Administrative and Appellate Courts in Belgrade and the Supreme Court of Cassation in July 2012.

To ensure accountability, the new High Judicial Council (HJC) and State Prosecutorial Council (SPC) have established disciplinary systems. The rules on procedure and liability adopted in July 2012 seem to be fully aligned with European standards.

Despite the progress made regarding the independence of the judiciary, the legal framework still leaves room for undue political influence over the judiciary, in particular as regards Parliament's power to appoint judges and prosecutors and its direct participation in the work of the HJC and the SPC. The re-appointment procedure carried out for judges and prosecutors in 2009/2010 and the review process to correct its shortcomings were overturned in July 2012 by the Constitutional Court, in large part because of the concern over political interference.

4.2 EU Assistance

Most of the funding that is provided for the three sub-fields this study is looking at, is for general judicial reform activities. The most common projects concern capacity building of central agencies, often through twinning arrangements; support to legislative reforms (often building on activities begun under the CARDS programme); infrastructure rehabilitation, construction, expansion or upgrading and procurement of equipment and supplies; introduction of ICT, modern case management systems; and – through multi-beneficiary projects – the building of regional networks and exchange of experiences.

4.2.1 Assistance to Albania

The judiciary has received support from CARDS and from IPA. The CARDS program EURALIUS 1 from June 2005 to November 2007 assisted justice reforms in particular improving management capacities of the Judiciary, improving the office for administration and Judicial budget, enforcement of rulings. EURALIUS 2 from November 2007 to May 2010 in addition focused on criminal justice and immovable property rights issues. IPA 2009 continues this assistance with a project “Assistance to the Justice System”. During the 2007-2011 period, there were only five projects, beginning as of 2009, that support judicial reform. With total budgets of around € 7.2 million, the two largest ones are largely for development of a case management system and assistance to the Ministry of Justice, while the three others provide equipment linked to the witness protection programme.

4.2.2 Assistance to Bosnia and Herzegovina

The seven fiches referring to projects that supported judicial reform had total budgets of about € 17.7 million, covering aid coordination and European integration capacities in the Ministry of Justice; establishment of an electronic case management system for courts and prosecutors; support to State court and prosecutor’s office, focused on war crimes and organised crime; ICT equipment for courts and prosecutors’ offices; strengthening of the technical and professional capacities of the judiciary; and a general justice sector reform program.

The project fiches contain log-frames for all the projects, with the outputs and indicators largely at a level where it is possible to monitor progress. The longer-term Outcomes are consistent and logically linked with the overarching sector policies and MIPDs. There are a number of observations throughout the fiches that point to the need for political commitment, guaranteed and continued financing from the public purse, the problems of the political-administrative fragmentation, and thus the high hurdles to overcome to produce results, and a recognition that BiH is failing along all of these dimensions compared with what is needed and promised.

4.2.3 Assistance to Croatia

The 17 projects that have supported judicial reform have addressed a range of issues: reform of criminal proceedings; support to the judicial academy and other forms of professional training and capacity building; support to the integrated case management system and strengthening of the administrative capacities of the Ministry of Justice; and projects directed towards improving the efficiency of the judiciary, rationalisation of the court system and development of probationary services. Budgets total about € 28 million. Coordination with other important donors has been good, with the World Bank and the Dutch in particular providing support in complementary areas.

4.2.4 Assistance to Kosovo

The assistance to judicial reform in Kosovo is quite significant, as can also be seen in figure 3.1 and table 3.1: nearly 11.7% of all IPA funding was for the three areas of Rule of Law, where judicial reform

is by far the larger, and in terms of absolute amounts Kosovo clearly also got the most of any of the six states on the chart.

Much of this is to physically construct an independent legal system, where the single largest project is for the Palace of Justice (€ 25 million). But there are also significant allocations to legal education system, building of capacities in the Ministry of Justice through twinning, support to the Judicial and Prosecutorial Councils, and a big program for vetting and (re)appointing judges and prosecutors.

4.2.5 Assistance to Former Yugoslav Republic of Macedonia

The seven IPA projects that have been funded in this field for a total of € 8 million include support to more efficient, effective and modern operation and functioning of the Administrative Court; strengthening of the judiciary; implementation of the juvenile justice and criminal justice systems; support to independent, accountable, professional and efficient judiciary and promotion of probation service and alternative sanctioning; strengthening of the prosecutorial services; and strengthening the Ministry of Justice including for improving knowledge on case law of the EU Court of Justice. The program has thus been quite comprehensive within the public administration but with no real assistance to non-state actors.

4.2.6 Assistance to Montenegro

The three projects in this field are a justice reform (twinning) project, support to the implementation of the new Criminal Procedure Code, and support to the implementation of the Juvenile Justice Code, with total budgets of € 4.3 million. The fiches contain log-frames, with the outputs and indicators largely at a level where it would be possible to monitor progress. The longer-term planned outcomes are consistent and logically linked with the overarching sector policies and MIPDs.

4.2.7 Assistance to Serbia

The six projects funded by the EU have been aligned with Serbia's National Judicial Reform Strategy adopted by National Assembly in May 2006. One project supports reforms in the court system while another addresses prosecutors' offices and the penal system. There is funding for an integrated IT system that connects courts, prosecutors' offices and penal institutions, which is also to strengthen court management and court statistics as well as increase transparency by enabling citizens' access to necessary information regarding a particular case.

In 2011, the EU joined other donors in funding a multi-donor trust fund (MDTF) for Strengthening the Rule of Law, managed by the World Bank. This first component of the project, Justice Sector Reform, is implemented through direct agreement with the World Bank, while the other sub-component will be done under direct EU implementation.

4.3 Results Achieved

Apart from the ROM reports, there is little independent results reporting taking place. The documentary evidence for actual results produced is thus limited, making it difficult to state with certainty what in fact is resulting from IPA assistance in many fields.

4.3.1 Albania

The support has clearly led to improvements in physical infrastructure but also in the legal and institutional framework. The development of a required legislative and policy framework has been advanced with the adoption of the Judicial Reform Strategy and Action Plan in July 2011 and most importantly with the limitation of the immunity of judges. An impressive number of laws have been

passed⁹. The limitation of immunity of judges is the major significant step forward in fighting corruption in the sector. A number of institutions received support and are claimed to function better as a result of this, including the High Council of Justice, the School of Magistrates, the Office for Administration of Judicial Budget, and the National Judiciary Conference.

While formal frameworks and institutions now have been put in place, there is little results reporting on the actual use, implementation and consequences of all these transformations. The concern is that while progress on formal structures has improved, as long as the judiciary itself is seen as corrupt, the expectations regarding performance are limited.

In regards to the projects in the field of judicial reform, 22 ROM reports covering the period 2005-2011 have been available to the team. Two issues stand out. The first is that most of them see sustainability as a problem – 12 reports give a “C”, which is high, and is a warning about the fiscal commitment of government. The other is that 19 reports give a “B” to the dimension “Likely Impact” – a higher figure than Effectiveness (17 reports) or Efficiency (only 15 reports). Rather than taking the ROM reports at face value – that projects that are not likely to be Sustainable and have low Efficiency are likely to produce important Impact – this seems to signal that ROM ratings need to be reviewed.

4.3.2 Bosnia and Herzegovina

The electronic Case management System and ICT components in general are seen as the most successful ones while training/capacity development gets acceptable marks, though the BiH training institutions in terms of permanent capacity remain weak. What is missing is application (real implementation) of some of the enhanced capacities, and in particular the cross-boundary collaboration required for an efficient and effective functioning of a modern judiciary across the country. Furthermore, the 2009 audit by the European Court of Auditors noted the lack of funding for operations and maintenance of the acquired infrastructure, so there was a danger that the improvements in fields that politically were not controversial and where the courts system was performing better, might face problems further ahead.

ROM reporting goes as far back as 2003, but with little reporting on IPA funded activities. Support to HJPC was tracked over the years 2005-2007, with ratings falling over time, to a large extent because objectives have become more ambitious in particular as the ICT systems grew and covered a larger section of the judiciary system. The ROM reports are the only external performance reporting provided, and do not add much insight in terms of real performance regarding judicial reforms. Furthermore, while some of the ROM monitoring has looked at core activities that the EU has supported over time, the monitoring is based on fairly short-term visits while the (short-term) projects are running so that it becomes difficult to identify longer-term results and seeing the projects in light of systemic change.

4.3.3 Croatia

PR 2011 noted the important progress achieved. The overwhelming share of foreseen reforms have been implemented and their sustainability is ensured through follow up projects and the ability of the state to fund priority activities. One example is the Judiciary Academy which initially received CARDS

⁹ This includes the Law on Mediation, the Law on Administrative Court, amendments to Criminal Code, the Law on Judicial administration, Law on judicial power, Law on HCJ, Law on High Court, Law on legal aid, Law on Constitutional Court, Law on School of Magistrates, Law on Organisation and Functioning of Prosecutor's Office, Law on Organisation and Functioning of the Ministry of Justice, Law on Serious Crimes Court, Law on the Organization of the Judicial Power of the Republic of Albania, and the Law on Witness Protection.

support in 2001, got PHARE support in 2005 and IPA funding later on, and was turned into an independent institution in 2010 by a separate Law. This presents a well-sequenced project that builds directly and within a short space of time on the results of a preceding project and will in turn be the basis of a succeeding project. *“The sequence would stop when the sector strategic target has been achieved. In effect, sequencing is therefore also a mechanism for maximizing impacts and a sector-based approach (SBA) is expected to facilitate project sequencing”* (HTSPE 2011).

The IPA 2007-2011 projects are all highly relevant as they are well aligned with the multiple needs of accession, in some cases assistance specifically addressed negotiations requirements for *acquis* chapters 23 and 24. In the remaining cases, assistance was directed to the strengthening of Croatia's capabilities for the absorption of funding under structural instruments. However, the decentralised implementation system where a national body, the Central Finance and Contracting Agency (CFCA), plays a key role, is criticized for the same short-comings as EU management: slow, bureaucratic, excessively concerned with rules rather than results, inflexible to restructure when conditions and needs have changed, etc. The sector approach that lies behind this also comes in for some criticism as it makes progress very dependent on the various components all being in place – and that often comes up against capacity constraints. So while a holistic approach in principle is good, the practical complications this creates reduces the net benefits.

In general, the twinning instrument continues to be the preferred implementation modality for legal approximation-related projects since the relevant expertise is to be found in the Member States. The relevance of twinning is set to further increase with the imminent accession of Croatia to the EU. National authorities generally prefer to receive assistance from other countries' administrations with hands-on experience about the possible issues they will have to face upon and soon after accession.

4.3.4 Kosovo

The Kosovo study notes that EU support has had a positive impact, both on infrastructure, the judiciary structure, legal foundations, and capacities. As an example, the study noted the success of the project that vetted judges and prosecutors: it had already managed to impact the nomination of vetted officials to the highest positions in the judicial sector in Kosovo (there is still a need to complete the process of vetting at municipal level). The project has real potential to impact on the effectiveness and fairness of justice as experienced by the population. Another success story is the reforms to the juvenile justice system, where the latest ROM report notes that *“According to the Probation Service (PS), in 2011 there was an overall increase of 30% of alternative measures provided to child offenders in comparison to the previous year ...Beyond mere numbers, what is evident is that the approach of several institutions toward juvenile delinquencies has shifted from imprisonment sentences to applying more child friendly, educational measures”* which, despite shortcomings in project management, remains an impressive achievement.

A total of 14 ROM reports, covering the period 2007-2009, show a variety of ratings both across projects and across dimensions: There are quite a few “C” awarded to the sustainability category while some projects actually received an “A” with regards to Relevance and Efficiency.

4.3.5 Former Yugoslav Republic of Macedonia

Progress has been made notably in the legal framework. The legislative framework in judicial reform includes an amendment of the constitution with regards to the Judicial Council as well as a number of laws being adopted and amended such as the Law on Courts; Law on Judges' Salaries; Law on the Academy for Training of Judges and Prosecutors; Law on Public Prosecutors; Law on Civil Procedure; Law on Criminal Procedure. A new framework for criminal procedure code foreseeing a

major shift towards a more adversarial system will not be applicable as planned from November 2012 because its application has been postponed for December 2013.

A number of policy documents have been adopted, including the Strategy of the Reform of the Criminal Legislation 2007-2011; Strategy for ITC in judiciary 2007-2010; Strategic plan of the Ministry of Justice 2011-2013; Judicial Reform Strategy 2005.

In terms of institutional reforms, important ones include the establishment and/or reform of the Administrative Court and the High Administrative Court, the Judicial Council, the Prosecutorial Council, and the Academy for Training of Judges and Prosecutors (the latter established with USAID support). Especially the establishment of the High Administrative Court in July 2011 filled an important gap. One evaluation of results from EU funding to the judiciary concluded that the Strategy for the Reform of the Judicial System has been successfully implemented; a huge mass of legislation and important technical and organizational transformations were made; in judicial independence the way forward was made with the impressive system of formal guarantees (SOGES 2010, p.37-38).

With regards to judiciary independence, the latest reforms included the removal of the vote of the Minister of Justice in the Judicial Council and from membership in the Council of the Public Prosecutors. Further efforts are needed in evaluation and tenure of judges, and in safeguards in the evaluation and dismissal procedures. According to the Law on Court Budget, the budget increase will phase out in 2013. However, in practice inadequate funding hampers further progress.

With regards to efficiency and impartiality there is a fully installed Automated Court Case Management Information System that as of 2010 provides standardized and unified oversight of cases. The 2012 Progress Report notes a significant reduction of the backlog of cases from around 678.000 in 2010 to around 295.000 in 2011 though the Supreme Court and the Administrative Court continue to increase the numbers of their backlog cases (pg. 11). Emphasis on targets and deadlines are, however, linked to dismissals. While the system may improve efficiency and reduce backlog of cases they also may affect the independence of the judiciary and the incentives to take on difficult cases, such as corruption and organised crime. An assessment of achievements under the CARDS program noted that FYR Macedonia is active in reforming the Judiciary and more advanced than most countries of the region (Particip 2009, pp. 1-2).

4.3.6 Montenegro

The main results lie in the (i) improvement of regional cooperation, in the area of prosecution through the Prosecutors Network project and more generally in judicial co-operation through the Justice Reform Project, (ii) strengthening the normative framework required to ensure the independence of the judiciary, and (iii) enhancing the efficiency of the judiciary. Results have also been achieved in strengthening of legislation for fighting crime. Overall these results are in line with the MIPDs. Findings of the progress reports confirm significant advancement along the three objectives.

Weak sector and donor co-ordination in the area of judicial reforms has been pointed out as a problem both in the ROM reports and by interviewees in the field. In view of the intended introduction of a sector based approach, this issue will require further attention. The project "Establishment of International Law Enforcement Co-ordination Units (ILECUs)" has helped in improving domestic co-ordination in the area of law enforcement.

With regards to a key regional project for South-Eastern Europe, which includes all the Western Balkans states, "Support to the Prosecutors Network", sustainability ratings dropped mainly as result of a lack of financial sources to sustain the network other than project funds. Even by the end of the project, an exit strategy for donor funding was not available. Similar problems apply also to the ILECU

project. Sustainability also seems to be at risk in some projects (e.g. ILECU) as a result of weak capacity among beneficiary organisations and the lack of involvement of stakeholders in project design.

4.3.7 Serbia

The key concern is that the new legislation is not being used and enforced properly to improve efficiency and full implementation of the Rule of Law. The EU believes the authorities must take additional measures to strengthen the independence, impartiality, competence, accountability and efficiency of the judiciary. It further recommends that a comprehensive analysis of the functioning of the new court network in terms of cost, efficiency and access to justice as well as improvement in the quality of judicial statistics is needed. To meet these challenges, it recommends a new strategy on judicial reform, together with an action plan to implement the strategy, based on a functional review of the judiciary.

The bottom line is that while formal institutional and organisational frameworks and capacities are in place, performance is not yet at required European standards.

The ROM reports reveal that while the relevance of projects *per se* is quite good, there are often short-comings in the designs in terms of addressing key challenges. On Efficiency, the earlier monitoring visits gave a “C” primarily due to delays in start-up and lack of local capacities to move projects forward. This has improved over time, but no project has scored higher than a “B”. On Effectiveness, the projects score somewhat better than Efficiency, so once projects begin delivering, what is produced is useful and to a large degree as intended. What is interesting is that the “Impact to date” dimension scores as well or better than the Effectiveness dimension, which reveals a somewhat optimistic faith in the future. As far as Sustainability is concerned, the relative solidity of Serbia’s public sector and its finances and the recognition that Serbia has put in place an appropriate structure and body of law gives the ROM teams the impression that most of the achievements are likely to be sustained.

4.4 Findings and Conclusions

A number of changes to the legal system and judiciary can be attributed to the funding provided by the EU, either over CARDS or IPA or both:

- Independence and professionalism has been enhanced with the modernisation of institutional setup. Most countries now have established judicial and prosecutorial councils in charge of setting standards, proposing or even approving new judges/prosecutors, assessing their work and even dismissing them. Some, like BiH, Kosovo and Serbia, have gone through a total restructuring of the court system and a vetting and (re)hiring of judges and prosecutors (though in Serbia the process and its results have been declared invalid). Implementing such a massive and simultaneous change in systems, structure and personnel is in itself a major achievement, though successful exploitation of the full potentialities of these changes is in most countries still some ways off, for both capacity reasons but also for lack of political support and will.
- Infrastructure has been upgraded, both physical buildings, equipment and vehicles, but also communications systems and various database services such as electronic case management systems (CMS). This has in some cases already produced notable improvements in court efficiency, and in other cases laid the foundations for this taking place over the years to come.
- Impartiality and efficiency of courts has been enhanced with the introduction of CMS, the judiciary is able to use randomisation of case allocations to reduce probability of corruption and influencing.

It also has allowed judges, prosecutors, police and others access to an increasing body of court cases, which is important for ensuring consistency and coherence in the understanding and application of the law as well as enhancing impartiality of courts.

- Professionalism has been enhanced through the establishment of training centres that provide judges, prosecutors and others with relevant skills for a more modern and efficient judiciary.
- While the main dimensions of the institutional framework for a modern judiciary in line with EU standards either are in place or coming into place, the big challenges are (i) implementation/ application of the new body of law that has been passed, (ii) operationalisation/ funding/ staffing of new organisations/ entities that have been established.
- One of the key challenges is changing the “corporate culture” of the larger judiciary – an understanding of the EU concepts and how to apply them, including clearer roles and better performance standards. In order to succeed, continuous training and – where needed – external assistance must be longer-term, predictable, where external expertise is carefully selected to produce visible value-added to the local actor/s.
- Peer learning through regional collaboration has been promoted for a long time and is given high marks by all and may be a key instrument for addressing lags in “corporate culture”.
- The judiciary needs to be able to program its support independently from the Ministry of Justice as otherwise there may be a conflict of interest (for example for assistance that is to strengthen the independence of the judiciary).
- In many states, a huge backlog of cases hampers the efficiency of the judiciary. Most of these are minor offenses (traffic violations, unpaid utility bills etc.) that alternative and non-court based dispute resolution mechanisms could handle. EU funding is supporting the piloting of such approaches in several countries but could do more.
- The importance of training of large numbers of staff is noted as important, both to transmit technical knowledge widely in an organisation but also to inculcate values and standards – “corporate culture”.
- **Impact and Sustainability** is largely held back by a lack of predictable and sufficient public funding. However, improvements in court case processing due to better and more wide-spread ICT-based systems are expected to continue to provide better legal Outcomes and thus, if and when the public at large gains increased confidence in the legal system as a fair and efficient arbiter of disputes and adjudicator of criminal offenses, public support may increase.

5. Fight against Corruption

There is no universally accepted definition of **Corruption** but commonly used ones are “*Abuse of public office for private gain*” (World Bank 2006) and “*The misuse of public power, office or authority for private benefit – through bribery, extortion, influence peddling, nepotism, fraud, speed money or embezzlement*” (UNDP 2004). A weakness of both is that they limit corruption to the public sphere. The definition used by Transparency International opens up to include private sector corruption: “*The misuse of entrusted power for private gain*” (www.transparency.org/whatwedo). While early work focused on personalised transactions, it is now recognised that corruption is often a systematically ingrained political problem that transcends the individual level (Kolstad et al 2008, Hellmann 2008, Mungiu-Pippidi 2006). There is therefore a need to include this systemic dimension of corruption, and a definition would therefore be “***The abuse of entrusted authority for illicit gain***” (Scanteam 2008a). This usage can cover all transactions between actors in state and non-state spheres where the structural/positional relation between the parties may influence the outcome, but still can take account of non-transactional corruption like forgery. The expression “entrusted authority” focuses on the ability to take decisions where both parties accept the legitimacy of the *position* to do so, whether formal (“power”) or informal (custom, norm). It covers individual as well as systemic corruption under neo-patrimonial systems and state capture. The term *illicit* – “forbidden by law, rules or custom” (Oxford Concise Dictionary) – points to the fact that not all acts of corruption are necessarily *illegal*. But corrupt acts are clearly understood as not fair, so either information is withheld from the other party (information asymmetry is important to many forms of corruption), or the power relations are such that the other party cannot withdraw from or change the outcome of the transaction much. The focus is also on *gains*, which are understood to be financial/economic and thus in principle possible to operationalize and measure.

This chapter first presents the situation regarding the fight against corruption across the region (section 5.1), looks at the assistance provided (section 5.2), before looking at the results achieved (section 5.3). The chapter ends by summarising the main findings and conclusions (section 5.4).

5.1 Situation

Given the above discussion, one could expect that corruption in terms of its nature, pervasiveness and form varies from one society to another. In the case of the Western Balkans states, the EU Progress Reports point to corruption overall as a major challenge across the region, and typically embedded in the state. In several of the countries, Progress Reports note the linkages that were established between criminal actors and political elites during the conflicts in the region, and that these have carried over into today’s societies. The problem of “state capture” – that institutions, instruments and power of the state are being used by special interest groups to further their own particular interests rather than the public good to which they were supposedly elected – is thus an important back-drop to understanding the nature, scope and challenges of corruption in the region. As with judicial reform in general, the picture varies from one state to another.

5.1.1 Albania

2011 Progress Report indicates some progress in government’s policies to fight corruption with the adoption in June 2011 of the new anti-corruption action plan 2011-2013 with action plans for all government ministries/agencies. While the implementation of the action plans is still ongoing there is an improvement in their quality in particular in the progress monitoring indicators. There has been moderate progress in policies and legal framework to fight corruption in Albania according to the

Progress Report 2012. (pg.14). Furthermore, the recent limitation of the immunity of judges and public officials has removed a fundamental obstacle to fight corruption and address the wide public perception about corruption of some members of the society (Progress Report 2012 pg. 14)..

Box 5.1: Understanding the Governance-Corruption Nexus: Context Matters

A DAC study (Husmann & Tisné 2009) refers to a comprehensive review of the anti-corruption literature that identified six approaches to addressing corruption that actors use (Scanteam 2008a):

- **Political and social dimensions: systemic corruption.** When a state is dominated by a corrupt elite that uses state power to further its own interests one needs to see if this systemic corruption can be addressed through political and social mobilisation/correction (enhancing overall societal transparency and accountability).
- **Rule of Law: control and prosecution:** Where the legal system functions, cases of corruption should be prosecuted in the courts to hold corrupt groups and individuals accountable.
- **Public administration and systems reforms: prevention:** Where it becomes difficult to address corruption that has already taken place, one may look forward by carrying out reforms that will make corruption more difficult, reducing its occurrence through preventive means. Typical is PFM reforms that aim at reducing discretionary decision making and non-transparent transactions.
- **Extractive industries and service delivery: sector corruption:** Most corruption takes place at sector level, and extractive sector and construction industry are considered the most problematic. Strategies may focus on “worst case” sectors since these may be more susceptible to change rather than overall systems.
- **Non-state actors: transparency and accountability:** Civil society and the private sector are key actors for pushing increased transparency and accountability since they normally have vested interests in better public services and fair competition for contracts. But both actors may also be engaged in corrupt practices. These are most easily addressed through steps that enhance transparency of their actions since they are vulnerable to this kind of “outing”.
- **State capacity building and organisational development: anti-corruption abilities:** This focuses on building the formal institutions of horizontal and vertical control within the state: Parliamentary oversight committees, the auditor general’s office, ministerial control offices, police and prosecutorial services including specific agencies like anti-corruption bodies.

The evaluation that followed this literature review found that most donors do not have coherent strategies for addressing corruption; have poor understandings of local context and thus opportunities and alternatives available for their anti-corruption interventions; do not coordinate well with others though this is improving; do not engage civil society to the extent they could and ought to; tend to work with individual agencies or bodies rather than promote inter-agency partnerships; should support more evidence gathering and public dissemination; and should reinforce longer-term preventive interventions such as supporting national accountability processes and align with country systems (ITAD 2011).

One of the priorities in MIPD 2011-2013 is the fight against corruption, the effective implementation of the anti-corruption Strategy and Action Plan, and removal of obstacles for investigation such as the immunity for judges and politicians. The objective is to have an adequate legal framework, enforce legislation and strengthen capacity to investigate and prosecute corruption cases. The legal framework has been strengthened as a result of GRECO recommendations in regards to incrimination and political party financing.

The High Inspectorate for Declaration and Audit of Assets and the Department of Internal Control and Anti-Corruption should be further strengthened and their capacities enhanced. The work of the Joint Investigative Units continued to represent a good instrument for investigating and prosecuting cases of corruption (Progress Report 2012, pg. 15). E-procurement was introduced in the public administration to reduce personal contacts and reduce opportunities for corruption.

5.1.2 Bosnia and Herzegovina

BiH signed the UN Convention on Fighting Corruption on 16 September 2005 and ratified it on 26 October 2006, though the Additional Protocol to the Council of Europe Criminal Law Convention is pending. BiH has not signed the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. BiH lags badly regarding implementation of recommendations made by the Group of States against Corruption (GRECO).

A first National Anti-Corruption Strategy and action plan was adopted in 2006 but with poor implementation. A new Strategy with an attendant action plan was passed for the period 2009-2014, and a law establishing the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption was passed in December 2009. The Agency has till mid-2012 received little funding with only the director and two assistant directors in place with no own facilities or support, though in June 2012 its rulebook was finally approved and recruitment of new staff begun.

Overall, BiH *“has made very limited progress in tackling corruption, which remains widespread throughout the public and private sector. The legal framework for fighting corruption is largely in place. However, implementation of existing legislation is insufficient ...”* (Progress Report 2011 p. 14). This is repeated in the Commission’s report to the European Parliament and Council which goes on to note that: *“Implementation of the anti-corruption strategy and plan remains weak”* (CMO(2011)666 final, annex 2, p. 59).

5.1.3 Croatia

In Croatia, the fight against organised crime and the fight against corruption are implemented as an integrated process since the Office for Combating Corruption and Organised Crime (USKOK) handles both. All projects for establishing the National Criminal Intelligence System (NCIS), connecting the databases of different institutions, creating the National Police Office for the Fight against Corruption and Organised Crime (PNUSKOK), reforming the criminal procedure legislation and independence of the judiciary are interconnected with increasing legislative and institutional capacity for the fight against organized crime and corruption.

However, reforms seem to be slow. While the 2008 PR applauded Croatia’s new strategy and a new action plan against corruption as well as the indictments issued by the USKOK, it stressed that the number of actual prosecutions remains low, and the problem is enormous. In the same report it is stated that *“some progress”* had been made against organized crime in Croatia and pointed to the police *“need to become more effective in the fight against corruption and organized crime”*. The PR 2009 used the same conclusion *“Some progress has been made”* in the area of organised crime. PNUSKOK was established within the General Police Directorate and became operational in February 2009.

There has been continuing progress with the application of a new Criminal Procedure Code that was further fine-tuned in July 2011. Applied to organised crime and corruption cases since 2009, the new criminal procedure has accelerated the investigation and the prosecution stages, with better cooperation between the police and prosecution services leading to more indictments. Preparations for the enforcement of the new code for all other criminal cases continue.

5.1.4 Kosovo

The Law against Corruption was adopted in 2004 and the Kosovo Anti-corruption Agency was established in July 2006. An Anticorruption Strategy 2004-2007 and a subsequent one adopted in 2009 with an Action Plan Against Corruption for 2009-2011 were put in place, and steps have been

taken for strengthening institutional and legislative capacities to prevent and confront corruption. Awareness in civil society regarding the seriousness of corruption has improved.

But high level corruption is considered prevalent in many areas and remains a serious concern. More needs to be done in terms of the number of cases of corruption being investigated and prosecuted, the financing of political parties needs to be reviewed, public procurement and declarations of assets by senior civil servants for conflict of interest situations need to be monitored better. National institutions need to build their capacities to take on high profile cases from EULEX, and the transfer of these responsibilities must be done such that there is no gap in the pursuit of wrong-doing.

5.1.5 Former Yugoslav Republic of Macedonia

The legal and institutional framework for fight against corruption in the FYR Macedonia is largely in place. The 2012 Progress Report notes that having put in place the institutional and legal framework, greater efforts are needed in the implementation of the existing laws (pg.13). The National Program for Adoption of Acquis foresees increase in the efficiency and effectiveness in fighting corruption. Similarly, the Accession Partnership outlines the need to track implementation of legislation; implement recommendations of the responsible national institutions as well as of the GRECO etc. The Progress Report 2011 identifies a decrease in corruption by the border police as the result of programs, trainings, monitoring and salary increases, but it goes on to note that the issue of lack of budget and staff is seen in the State Commission for the Prevention of Corruption (SCPC), the Anti-corruption Unit within the Organised Crime Department of the Ministry of Interior, and the Basic Public Prosecutor's Office for the Fight against Organised Crime and Corruption as they all remain understaffed and underfinanced. The capacity of the judiciary to process high profile cases of corruption also remains weak.

The National Programs for fighting corruption provide a good overview of the areas more prevalent in need to fighting corruption, and identify some priority concerns. In **the political sector** the financing of political parties is an issue as the current reporting lacks mechanism to discuss real financial means and their sources and allocation. In the **judiciary**, statistics on corruption cases should be established; transparency should be improved (web pages be updated, publication of annual reports), the capacity of the public prosecutor office in fighting organized crime and corruption should be strengthened. With regards to **Law Enforcement Agencies** coordination and efficiency needs to be strengthened as well as transparency and accountability in asset declaration of public officials should be improved. **Customs** and especially customs administration are considered to be at high risk for corruption by Progress Report 2011 and therefore represent a special sector in the National Strategy. In the **Public Sector**, public procurement and the independence of the Public Procurement Bureau and its director are noted. According to the 2012 Progress Report corruption in public procurement is a serious problem (pg. 12). With regards to **CSOs** there is a visible activity in raising public awareness and advocacy. However CSO actors have expressed their concern for the real risk for corruption and conflict of interests with allocation of the public finances due to lack of transparency.

5.1.6 Montenegro

Corruption is a serious concern in Montenegro. A National Commission has been established for monitoring the implementation of the Strategy on Anti-Corruption and Organised Crime (2010-2014) and its associated action plan (2010-2012).

A Directorate for Anti-Corruption Initiative (DACI) was established by Governmental Decree in 2001 and serves as a secretariat to the National Commission. DACI is in charge of (i) promotional and preventive activities aimed at effective combating corruption, (ii) working towards adoption and

implementation of European and international standards and instruments in the area of anti-corruption, (iii) and enhancing the transparency in business and financial operations.

A Commission for Prevention of Conflict of Interest, elected by Parliament, has been established as an independent body. The Commission provides opinions and decisions of the existence of a conflict of interest of public officials. Concern remains over the capacity of the Commission to perform its supervisory role adequately.

The Progress Report of 2011 states that *“Progress can be reported in the fight against corruption.... Montenegro has made significant efforts to strengthen the legal framework needed for combating corruption and to address outstanding recommendations of ... (GRECO)... Steps have been taken to strengthen the institutional and administrative capacity of the prosecutors and police to fight corruption. A special anti-corruption investigation team has been established, made up of representatives of the police administration, the Office for prevention of money laundering and terrorism financing, the tax and customs administrations, and reporting to the Special Prosecutor for organised crime, corruption, terrorism and war crimes. Montenegro has made efforts to establish a solid track record of proactive investigations, prosecutions and convictions in corruption cases at all levels, which is part of the Opinion key priority on anti-corruption.”*

5.1.7 Serbia

The 2007 Progress Report noted three priorities for Serbia: (i) implementation of the action plan on the anti-corruption strategy and the establishment of an independent and effective anti-corruption agency; (ii) the ratification of international conventions against corruption; and (iii) clarification and enforcement of regulations related to the prevention of conflict of interests, especially a transparent system of declaration of assets of public officials.

The Ministry of Justice prepared a National Anti-Corruption Strategy in line with the recommendations by the Council of Europe, and a Law on the Anti-Corruption Agency (ACA) was adopted in 2008, the ACA becoming operational in January 2010. ACA was allocated premises, funding and initial technical and administrative assistance.

The Civil Law Convention on Corruption and the Additional Protocol to the Criminal Law Convention on Corruption were ratified in November 2007. The compliance report was submitted to the Council of Europe's Group of States against Corruption (GRECO) in December 2007, and the 2009 Report noted that Serbia was implementing GRECO recommendations and international conventions. The law enforcement authorities have shown a higher level of commitment to fighting corruption, leading to the arrests of several suspects, and a number of high-profile cases have been opened. Internal control is operational in all law enforcement agencies. The new Law on Financing Political Activities, adopted by the National Assembly in 2011, provided legislative framework for monitoring of political entities in the electoral process. Within its competencies the ACA become responsible for monitoring election campaign costs and supervision of political funding.

The 2012 Progress Report notes, though, that corruption remains prevalent in many areas and continues to be a serious problem. While the legislative framework has improved substantially, there are shortcomings, such as lack of protection of whistle blowers. The overall conclusion is that the implementation of the legal framework and the efficiency of anti-corruption institutions need to be significantly improved. A more proactive approach to investigating and prosecuting corruption and the judiciary is required, with a particular attention to high-level cases of misuse of public funds. Thus, stronger political direction and more effective inter-agency coordination are needed to significantly improve performance in combating corruption.

5.2 EU Assistance Provided

Assistance for combating corruption and corrupt practices in some countries began under the CARDS program. Under IPA, it has become a more high-profile concern.

5.2.1 Assistance to Albania

While the general police reform program of 2007 mentions corruption as one area to be supported, the only other anti-corruption project during the last five years is a € 2 million support to the national Anti-Corruption Strategy (2007-2013) that was part of IPA 2008 through the PACA- Project against corruption in Albania. The specific objectives of the project are to strengthen the implementation of anti-corruption policies and contribute to prevention of corruption.

5.2.2 Assistance to Bosnia and Herzegovina

Three IPA-funded projects 2007-2011 totalling € 3 million provided support to CSOs (2008) and then to the anti-corruption agency (2009 and 2010). The large-scale support to law enforcement with EUR 8 million has a major component addressing corruption. The support to CSOs engaged in anti-corruption work was partly meant to mobilize civil society for a more coherent effort to address corruption issues. The Delegation felt that the results from this attempt were not as expected, in part because BiH CSOs remain weak. One issue that CSOs raise, however, is that it is very costly for small organisations to compete for EU funds: the process takes too long, the requirements are too strict – especially regarding the need for own funding – so it is generally easier to look for funding from other sources.

5.2.3 Assistance to Croatia

Support through IPA has not been substantial in regard to the fight against organized crime and corruption. The relevant projects show total budgets of nearly € 11 million, of which 50% was support to the USKOK and other Public Prosecutors office and 50% for various civil society bodies including the University of Zagreb. The biggest amount of € 5.5 million dedicated to NGO anticorruption projects have been managed by the Government Office for Cooperation with NGOs. The mid-term review of the IPA programme in Croatia concludes that *“Although the anti-corruption policy was a key priority for accession, it received a comparatively much smaller share of assistance funds. In the period under consideration only IPA07 included interventions in this area”* (Economisti Associati 2010).

5.2.4 Assistance to Kosovo

Kosovo has only one project specifically dedicated to anti-corruption work. With a budget of € 1 million, the project was to support the Kosovo Anti-Corruption Agency, the police, the prosecution service and the Ministry of Justice to develop anti-corruption policies and a legal framework while also promoting public awareness.

5.2.5 Assistance to Former Yugoslav Republic of Macedonia

Nine IPA projects with total budgets of nearly € 12.5 million address various dimensions of the corruption threat, though a number of these have their central attention on larger judicial reform issues (independent, accountable and efficient judiciary, etc.). The assistance thus covers a wide range of issues, such as corruption prevention measures; reducing corruption within the border police; support to CSOs, etc.

5.2.6 Assistance to Montenegro

Two projects with budgets totalling € 1.9 million have been signed, where DACI is the main beneficiary, along with the Commission for the Prevention of Conflict of Interests. The objectives of the most recent one are (i) procedures and measures on integrity are prepared and enforced, (ii) enhanced institutional and administrative capacity of DACI and Commission to coordinate anti-corruption preventive measures, including enforcement of integrity measures in the public sector, (iii) anti-corruption co-ordination, prevention and monitoring measures/system established and fully operational, (iv) legal/regulatory framework on anti-corruption prepared, adopted and enforced, (v) increased public awareness (in the public sector, private sector and among the citizens) on integrity, ethical principles and anti-corruption measures. One challenge is that the anti-corruption strategy and action plan do not prioritise results or activities, but the other is that the results are so vague that they are relevant for any country at any time so it will be very difficult to verify degree of success.

5.2.7 Assistance to Serbia

Two projects address corruption explicitly – one providing support to the Anti-Corruption Agency while the other is a component in a larger Rule of Law program. This sub-component is to strengthen the capacities of law enforcement agencies and the judiciary in the fight against corruption, including institutional reforms aimed at preventing and combating corruption.

One result has been the creation of a specialised department within the Public Prosecutor's Office for serious corruption cases, and anti-corruption departments have been set up in a number of district prosecution offices. But in most cases, these bodies lack the resources, human and financial, to adequately carry out their mandate.

5.3 Results Achieved

In **Albania**, strategic documents in the field of anti-corruption have been developed and adopted, including the Anti-corruption Action Plan 2011-2013, a medium/ long term strategy and work plan for the expansion of the Financial Crime Investigation unit. The recent limitation of the immunity of judges and high public officials represents a key reform in removing a major obstacle in fighting high level corruption. The implementation of this legislation is now fundamental. While there is an increase in the number of corruption cases been investigated and prosecuted, the conviction rates remain very low. From the 4 ROM Reports available, they have been graded with a small majority of Bs representing 60 % of the total grades while the Cs represent a significant 40 % of the total. Effectiveness is by far the weakest category as all are given the grade C.

In **BiH** there is little in terms of specific results that can be recorded related to EU funding. There are no ROM reports on the projects, and the performance of the anti-corruption agency so far has been extremely limited. What little direct reporting available to the public there is on corruption is largely generated by CSOs.

In **Croatia** the program of the government for assumption and implementation of the *acquis communautaire* from January 2010 gives strong emphasis to the further development of a criminal intelligence system and to the implementation of a NCIS in all law-enforcement agencies, which will raise interagency co-operation in the fight against crime to a new level. But there are no ROM reports for Croatia (since it is already implementing DIS), and thus there are no independent assessments of actual achievements, apart from the positive general assessments provided in the annual PRs.

In **Kosovo**, stakeholders stressed the positive impact of the one anti-corruption project in terms of new legislation (the project helped draft several new anti-corruption laws). Despite this positive

assessment, the project seems to have remained at the level of process with limited impact in terms of corruption as perceived/experienced by the population. A study on the corruption situation in Kosovo could have been helpful in this regards (at least as a baseline study) but this planned activity has been cancelled. The former head of the Anti-Corruption Agency faces corruption charges and this alone illustrates the magnitude of the challenges in Kosovo. The ROM report refers to this issues when it states: "*the first remaining challenge that Kosovo faces in launching an anticorruption strategy is credible leadership*". The difficulty to transform process into impact may partly explain why only one projects focussed on the anti-corruption agency in Kosovo.

In **FYR Macedonia** the legal framework for fighting corruption is largely in place: a number of laws have been passed that address key concerns; the country has ratified a number of international treaties in the area; strategic documents have been developed and adopted; and an institutional framework is in place, focused on the State Commission for Prevention of Corruption but including the Public Revenue Office; Anti-corruption Department, Public Prosecutor Office for Fight against Organized Crime and Corruption; the Finance Police; the Agency for managing confiscated property and property gains in criminal and misdemeanour procedures etc. There are not any ROM reports available on IPA projects on anti-corruption and so no result and impact assessment of EU assistance in this area is available.

In **Montenegro**, two key results expected from the last project were (i) DACI's improved co-ordination of legislative improvement in the area of economic crime and (ii) increased public awareness about corruption amongst target groups and general public. Interviews confirmed that the experts provided important recommendation to reinforce the capacity of the DACI, including an action plan and recommendation to restructure the agency. The ROM reports confirm the strengthening of DACI's legal advisory and public awareness functions as a result of EU support. On the inter-agency collaboration, another key area, there were no results, since no funding and explicit activities were foreseen on either agency's funding for this. Here a sector approach that builds on a solid sector strategy with predictable budgets for inter-agency activities and capacity building would be better.

In **Serbia**, the only external assessment is a recent ROM report looking at the early support to the ACA, with quite positive findings. The "Impact to date" in particular got an "A" based on the assessment that "*The capacity building nature of the project enables the involvement of a large number of stakeholders at various levels and it is considered that the project will have a significant impact on all the targets groups and the society in general*". The same report goes on to note, however, that "*there is a risk that political developments could appear and jeopardise the positive impact of this action. Fortunately, the project undertakes timely measures to mitigate any negative effects. Constant monitoring of the political developments is a vital control mechanism applied in this intervention*" (ROM report, 24 August 2012).

5.4 Findings and Conclusions

- EU funding has supported important improvements in the institutional frameworks for fighting corruption: better laws, establishment of anti-corruption agencies and strategies, action plans for information and prevention activities, addressing conflict of interest issues in public administration. The big challenge across the region is genuine implementation and results.
- While corruption ratings have improved somewhat in some of the countries, the Western Balkan states as a whole remain among those with the poorest ratings in Europe. In most countries, corruption is seen as deeply embedded in the national and local politics, with strong links to organised crime groups in some of the states, as noted above.

- In most countries, corruption is pervasive and touches on core interests of important parts of the political elite. Programming of anti-corruption work will therefore have to be based on the mobilization of a broad range of stakeholders who may have somewhat different interests in the issue. Support to CSOs in this field has been ad hoc and seemingly without a longer-term and broad-based strategic perspective (see text box 5.2).

Box 5.2: EU's Technical Assistance for Civil Society Organisations, TACSO

TACSO provides funding to CSOs in the Western Balkans and Turkey - see www.tacso.org. A recent allocation is for example funding nine projects for combating corruption and trafficking in human beings. Most projects are 12-18 months, involving cross-border alliances (3-4 CSOs are normally involved), which is very useful. There are several challenges, however:

- The short-term project-based funding means predictability for future funding is low. A number of CSOs told about getting one EU grant and then it could take several years before they succeeded with another proposal. This on-again off-again funding leads to high staff turnover, which in the civil society field is problematic: fragile institutions lose their institutional memory which cost a lot to build since their skilled project staff have to leave to find new job opportunities elsewhere;
- The cost of applying for EU funding is seen as very high: the documentation requirements are considerable and thus take a lot of staff time, the processing period is long with little certainty regarding the final decision so both time and uncertainty costs are high.
- Local organisations with unpredictable funding are not able to plan longer-term and issues-focused but have to jump according to what kinds of funding objectives are currently available;
- The own-funding requirement – normally 5-20% - is problematic for advocacy and watch-dog CSOs because actors that have funds – the public sector and big business – are often the subjects of the monitoring. Accepting funding from such bodies easily puts the CSOs in an obvious conflict-of-interest situation. Croatia provides such funding from the public sector through a fairly transparent government NGO program, which is probably the “best practice” approach in the region so far.

The counter-problem, of having local organisations totally dependent on donor funding for advocacy work, undermines legitimacy and credibility. However, funding for a couple of project cycles is not sufficient to get sustainable organisations in place. A longer-term and realistic programme for Rule of Law monitoring needs to be designed since independent and critical local monitoring of public agencies and powerful private interests is of strategic interest to the EU. Building this level of insight and accountability mechanisms is going to require time and continued funding, not *ad hoc* financing of particularistic agendas.

- As far as results from the current support is concerned, the limited funding and results reporting, including lack of relevant indicators of achievement, mean that it has not been possible to identify results up to Outcome level (for example what the passing of new laws has meant in terms of better identification and conviction in cases of corruption).
- In order to monitor results better, more sophisticated tracking will be required (see box 5.3), and there should be particular attention paid to high-level corruption cases.

Box 5.3: “More Sophisticated Tracking”

There are two issues that need to be addressed if one wishes to be able to track the fight against corruption better: (i) agreeing on the *indicators* for the phenomenon that one wishes to measure (ensuring the **validity** of the measurements), and (ii) defining the instruments for doing so, how often they are to be used, who is going to carry out the monitoring and reporting (ensuring the **cost-effectiveness, timeliness, credibility** of the reporting).

The general “success criteria” against which the indicators are to track performance would flow from the accession negotiations and particularly the requirements for chapters 23 and 24 (see footnote 6). Lot 2 of this task identified a series of variables that are currently used, by different actors with differing periodicity and geographic coverage, and thus with documentable implementation records.

The Lot 2 report in its Annex 3 looks at both **process** and **performance** indicators, and separates the anti-corruption dimension in three main categories: (a) **prevention of corruption**, and (b) **enforcement** (see the report for Lot 2, Annex 3, pp. 62-71).

When it comes to **Prevention of Corruption**, the report provides a total of 46 process and 63 performance indicators across 16 dimensions: (i) corruption prevention measures, (ii) monitoring and evaluation of anti-corruption policy, (iii) internal and internal control of public administration, (iv) corruption risk audits/public integrity, (v) political party funding, (vi) recruitment and promotion, (vii) training, (viii) codes of conduct/ethics, (ix) job rotation, (x) whistle blowing/reporting, (xi) E-governance, public services, (xii) public information and awareness raising, (xiii) international cooperation, (xiv) participation civil society, (xv) public procurement, and (xvi) free media, access to information.

Regarding **Enforcement**, the annex lists 15 process and 23 performance indicators across five dimensions: (i) legal frame, (ii) anti-corruption agencies, (iii) conflict of interest, (iv) assets reporting, and (v) sanctions.

There is thus a considerable universe of indicators already being used by a range of actors. The question is which dimensions the EU would like to track how intensively, and thus how many variables are required to provide satisfactory coverage. The report provides a more careful discussion of the various indicators, their sources, which agencies/bodies collect the data how often across how many of the seven countries, so that it is fairly simple to design a monitoring framework based on ease of compilation, coverage, comprehensiveness and cost.

In contentious fields of Rule of Law such as organised crime and corruption, particular problems arise because the *incentives* to use available instruments may be distortive. Reporting suspicious financial transfers may require a lot of extra work for financial institutions and reduce lucrative transactions. Reporting corruption is almost always a “no win” situation for whistle-blowers unless protection and incentives are very strong and credible, etc.

Many of the challenges thus are with a distortive incentive environment as much as problems of measurement. Hence the notion that what is required is “more sophisticated tracking” – not simply more monitoring.

6. Fight against Organised Crime

The United Nations Convention against Transnational Organized Crime (2000) defines organised crime groups as "*structured group of three or more persons existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences in order to obtain, directly or indirectly, a financial or other material benefit.*" When it comes to organised crime in the Western Balkans, the main concerns are with trans-border movement of illegal commodities like drugs and weapons; trafficking in human beings; and transfers of gains from criminal activity (money laundering). Because of the important role armed groups played in the region during the conflict periods, the fight against organised crime is seen as particularly important.

The links to corruption are often pointed to as fundamental, since the gains from corrupt practices in part accrue to criminal gangs and subsequently often are transferred abroad to ensure that they cannot be confiscated if the criminal activity is uncovered. Money laundering is therefore given considerable attention, also because of its potential use by terrorist organisations.

This chapter first presents the situation regarding the fight against organised crime in the region (section 6.1), looks at the assistance provided (section 6.2), before looking at the results achieved (section 6.3). The chapter ends by summarising the main findings and conclusions (section 6.4).

6.1 Situation

Organised crime is seen as particularly complicated in parts of the Western Balkans due to the transformation of some of the armed groups during the conflict period into organised crime gangs. Because of their military importance during the conflict, they established close ties to different parts of the political elites, and some of these links persist. During periods, some of the states thus earned a reputation as havens for trans-border criminal gangs engaged in smuggling of weapons, drugs and other commodities, and in large-scale money laundering. These groups clearly are fighting the strengthening of the rule of law, and thus represent serious "spoilers" for progress.

Money laundering can be defined as "*the conversion of criminal incomes into assets that cannot be traced back to the underlying crime*". The need for anti-money laundering capacities therefore goes beyond organised crime and include tax evasion and public corruption. As discussed in text box 6.1, globally most of the trans-border illicit gains are untaxed corporate profits.

6.1.1 Albania

The 2011 and 2012 Progress Reports note that some progress can be reported in police cooperation and fight against organized crime. Overall, the 2012 Progress Report notes some progress particularly in border management, international cooperation and fight against organised crime (pg.57). The legal framework or the so-called "anti-mafia" law is in place and needs to be implemented. The MEMEX criminal intelligence system has improved data exchange within the Albanian State Police.

The MIPD 2011-2013 has a particular focus in strengthening the fight against organized crime through proactive investigations and threat assessments as well as regional and EU cooperation including better coordination between the Law Enforcement Agencies.

Albania has adopted a number of documents including the National Strategy for fight against Organised Crime, Trafficking and Terrorism, the National Strategy for fight against Trafficking of Human Beings and Children, Law against Money Laundering, National Drug Strategy. There is a need

for much greater institutional cooperation between the various institutions fighting organized crime such as the: prosecutors' office, police and customs. There are a number of relevant laws that have been adopted and/or amended in this area:

The Ministry of Justice and the Ministry of Interior are responsible in regards to the EU Integration in the sector of organized crime including border management, migration and asylum, police cooperation, human trafficking, narcotics, money laundering.

Box 6.1: Trans-border Money Flows and Money Laundering Issues

Publish What You Pay (PWYP) Norway has produced reports that show that most of the illegal capital flows are related to how big companies avoid paying local taxes rather than due to corruption or organised crime:

- **“Piping Profits”** examines how big multinationals set up subsidiaries in tax havens (jurisdictions with lax standards for accounting, auditing and reporting, and low or zero tax rates) and legal havens (jurisdictions that shield companies from insight into ownership structures and contractual arrangements) such that it becomes impossible for countries to trace intra-company transaction flows and figure the extent to which transfer pricing is reducing taxable profits in-country (BP had, according to its 2010 annual report, 2850 subsidiaries around the world) (PWYP 2011).
- **“Lost Billions”** takes the previous report one step further by examining transfer pricing, using mispricing of crude oil in the US and EU from 2000 through 2010. This is one of the easiest forms of transfer pricing to detect since it uses the actual petroleum transaction. The conclusions are that profits were moved from source country to the oil companies, with over USD 110 billion lost from taxable income records (PWYP 2012a).
- **“Protection from Derivative Abuse”** looks at how oil companies use sophisticated financial instruments like derivatives to avoid local taxation. Extractive industries are seen to be big users of derivatives, and use them among other things to transfer out pre-tax profits. The study notes that in some cases this allowed companies to reduce local taxes by over 10% (PWYP 2012b).
- **“An Extended Country by Country Reporting Standard”** provides a model for how the international community can ensure that these kinds of abuses can be reduced through more open and detailed reporting. By publishing actual production and tax payments and showing profits (for example in tax havens where the company has no activity), it becomes easy to see whether firms are in fact behaving in good faith or not (PWYP 2012c). *This proposal builds on the law passed by President Obama in 2010, the “Wall Street Reform and Consumer Protection Act”* (known as the Dodd-Frank Act) which is a financial regulatory reform that among other things requires extractive companies registered on US stock exchanges to provide basic country-by-country reporting. A somewhat tougher law is now being proposed in the EU.

For companies that adhere to “good practice” standards, getting such international codes in place is important, because markets otherwise become distorted: firms that can report high profits due to tax avoidance will attract more investor capital, for example. At the same time, it is also clear that the international advisory services provided by the big four audit companies – PwC, KPMG, Ernst&Young, Deloitte – with their 650,000 staff worldwide focus a lot on what is referred to as “tax planning”: how to minimize local tax claims through innovative though technically legal use of instruments, institutions and international resource transfers. And it is largely the so-called high street banks based in the financial centres in western capitals, not shady banks in tax havens, that are the major transit channels for and end-managers of these funds.

A critical point to note in this connection is that corruption is less of an issue when it comes to illicit financial flows (“capital flight”) than is often claimed. According to a study by Global Financial Integrity (GFI), *“in the cross border flow of illicit money, the corrupt component appears to be very much the smallest, the criminal component the next, and the commercially tax evading component, in which western interests are deeply involved, is by far the largest at somewhere between half and two-thirds of the global total”* (Baker 2012, p. 8).

The 2011 Report emphasizes that the fight against drug trafficking, money laundering, trafficking in human beings and protection of its victims must be intensified and conducted systematically, and the legal framework for the confiscation of criminal assets systematically enforced. According to the 2012 Progress Report, progress can be reported in fighting money-laundering (pg.57). There is an increase

in the confiscation of criminal assets and the Agency for the management of confiscated assets has started auctioning, there is an increase of undercover agents and special investigative measures

The 2012 Progress Report notes further progress in the fight against trafficking in human beings (pg.56). The Office of the National Anti-trafficking Coordinator (ONCAT) has improved capacities and increased its work. Albania is no longer considered a major country of transit and although there is a decline in numbers, it still remains a country of origin of women and children trafficked.

The 2011 Progress Report notes that the fight against drugs remains an area of concern, although recently a more active approach has been adopted by law enforcement agencies, resulting in drug seizures. Albania continues to be on one of the Balkan drug trafficking routes and an action plan to fight cultivation of narcotics is being implemented. Modest Progress is noted in cooperation in the field of drugs (Progress Report 2012). There is a new anti-drug strategy as of June 2012.

The 2011 Progress Report noted that the immunity of public officials, the absence of a proactive approach and the lack of resources and equipment continue to seriously obstruct effective investigation. The recent limitation of the immunity of judges and high public officials has ended the issue of immunity and the legislation now needs to be implemented..

6.1.2 Bosnia and Herzegovina

Organised crime activities in BiH centre on trafficking drugs and human beings and financial crime including money laundering. BiH has not yet signed the Council of Europe's Convention on the validity of criminal judgments, a key tool in fighting cross-border crime, and its witness protection is inadequate. While BiH does not have a specific law on illegally acquired property, some of the issues are addressed in its regular criminal legislation. The lack of clear legislation is hampering anti-money laundering enforcement, and in 2010 only two out of 215 reports on money laundering were transmitted to the prosecutor's office. Seizure of criminally gained assets remain low, and shortcomings identified by MONEYVAL's reporting have largely not been addressed

The latest Progress Report notes that BiH is at an early stage of its fight against organised crime, human trafficking, drug trafficking, money laundering and seizure of illegally acquired assets. The Commission's latest report to the European Parliament and Council is highly critical, stating that "*Little progress has been made in the fight against money laundering. The implementation of the strategy and action plan for the prevention of money laundering remains limited. There has been little progress in the fight against drugs. The absence of effective judicial follow-up impedes the fight against drug trafficking, which remains a serious problem.....The fight against organised crime remains insufficient due to the lack of effective coordination between law enforcement agencies. Organised crime remains a serious concern that affects the rule of law and the business environment. Efforts to fight trafficking in human beings need to be intensified and deficiencies in identification of victims of trafficking addressed*" (CMO(2011)666, annex 2, p. 64).

6.1.3 Croatia

See section 5.1.3

6.1.4 Kosovo

The capacity to fight organised crime remains limited in Kosovo. Furthermore, the executive power of EULEX mission to fight high profile cases of organized crime in Kosovo can be a deterrent for developing national capacities without a transition plan envisaged. Few arrests and no seizure of asset have taken place. According to PRs, a more proactive approach by the law enforcement

agencies and judicial authorities is needed to tackle organised crime. Economic/financial crime and money-laundering remain serious concerns.

Human and technical capacity is seen as insufficient, and the quality of investigations unsatisfactory, so Kosovo's capacity to investigate and prosecute economic crimes remains limited. Despite some confiscations, the effectiveness of the measures against illicit traffic is very limited. Efforts to fight drug-trafficking are also seen as poor. The police need to address structural and organisational challenges and improve its ability to fight complex types of organised crime.

6.1.5 Former Yugoslav Republic of Macedonia

The Progress Report 2011 noted the establishment of the Centre for Suppression of Organised and Serious Crime within the Ministry of Interior. The Law on National Criminal Intelligence Data was adopted and became effective 1 January 2012. The National Criminal Intelligence Database is to be an instrument for intelligence-led policing and coordination in the frames of the Bureau of Public Safety. Changes to the Criminal Procedure Code also aim at improving the capacity to tackle complex organized crime and corruption cases.

The capacities of the Office for the Prevention of Money Laundering and Financing of Terrorism were increased though the quality of investigations still needs to be strengthened. In regards to trafficking in human beings also some progress has been achieved primarily with the national shelter for victims of trafficking. In the field of drugs little progress is reported though the National Drug Strategy 2009-2012 Action Plan is being implemented. The country largely meets acquis requirements (2011 Progress Report p.69). The MIPD 2011-2013 has a particular focus in fighting organized crime as it specifies areas of assistance: fighting organised crime, corruption, money laundering and trafficking of human beings and drugs.

6.1.6 Montenegro

The overall responsibility for fighting organised crime lies with the Minister of Interior. An autonomous Police Directorate has been created, and its Criminal Investigation Police Directorate is being reorganised to address specific areas of organised crime. The Administration for the Prevention of Money Laundering and Terrorist Financing was established in 2003. It has administrative but no investigative powers.

Particular shortcomings include the scope and quality of anti organised crime legislation (including AML laws and regulations), poorly equipped institutions, the lack of use of informants and absence of a budget for international investigations, insufficient co-ordination among agencies and the inadequate knowledge capacity of prosecution services to pursue complex cases.

The latest Progress Report notes that focus must be on putting in place and using the instruments necessary for efficient police and investigative work, including intelligence-led policing, establishing an integrated intelligence information system, strengthening proactive investigations and interagency cooperation. Effective implementation of the new Criminal Procedure Code is the key to achieving sustainable results in this area. Further efforts are needed in the fight against trafficking in human beings and fight against money laundering in particular.

6.1.7 Serbia

The starting point for the fight against organised crime in Serbia was seen to be the need to (i) adopt outstanding legislation; (ii) develop the capacity to seize assets, implement a national strategy against organised crime and strengthen criminal intelligence; (iii) continue the fight against trafficking in

human beings, including assistance and protection to victims; and (iv) increase the efficiency of international cooperation and implementation of relevant international conventions.

Towards the end of the period, solid progress had been produced regarding the legal framework for the fight against organised crime. Tangible results remained rare, however, though better inter-agency coordination and regional and international cooperation has led to some improvements. But organised crime remains a serious concern in Serbia, especially regarding money laundering and drug smuggling, and there is a need for the country to improve investigations and ensure convictions in the cases that can be proven.

6.2 EU Assistance Provided

Assistance for fighting organised crime has increased noticeably over the last several years, but still remains a very limited part of the larger Rule of Law funding in the region.

6.2.1 Assistance to Albania

The major police reform program that was begun in 2007 has been extended several times and in the 2011-2012 period contains support to the Serious and Organised Crime unit. In 2009, four other projects were added, three aiding the witness protection program and one financing anti-money laundering capacity building. The total budget for these last four projects is about € 2.5 million. In particular, the witness protection program has provided significant assistance and is considered to have achieved very good results.

6.2.2 Assistance to Bosnia and Herzegovina

Only two IPA projects totalling € 3.4 million focused on organised crime. One funded training for staff of financial regulatory agencies and institutions to tackle the problem of money laundering. The other one supported State court and prosecutor's office to build capacities to investigate and prosecute economic and organised crime and corruption.

Other projects that deal with justice sector reform and capacity building normally include aspects of combating organised crime. The establishment of the CSM throughout the courts system allows the courts to better prioritise important cases such as trafficking in human beings. The prosecutors' offices are the ones that are to take all serious crimes to court and thus the continued support in this field also will contribute to the fight against organised crime – though the project log-frames do not include such dimensions among their Outputs.

6.2.3 Assistance to Croatia

See section 5.2.3.

6.2.4 Assistance to Kosovo

A total of six projects are seen as relevant for the fight against organised crime, all of them having been approved in 2009 or later. These include projects aiming at reinforcing investigation capabilities of the police, fighting money laundering/economic crime, and fighting illicit drugs and human trafficking.

6.2.5 Assistance to Former Yugoslav Republic of Macedonia

Under IPA, a total of ten projects included at least some support to fighting organised crime. Most of these are also the projects that were listed under the previous heading of fighting corruption, so it is

difficult to ascertain the exact size and nature of the efforts to combat organised crime, but as in other countries in the region the two dimensions are closely linked in how assistance is provided.

6.2.6 Assistance to Montenegro

Two IPA projects have assisted the fight against organised crime in Montenegro: Fight against organised crime and corruption and Strengthening the Regulatory and Supervisory Capacity of Financial Regulators. A third project “Support to implementation of the new Criminal Procedure Code (CPC)” include a small component against organised crime.

These projects focused on strengthening the intelligence and investigation service of the Criminal Police Directorate, enhancing undercover investigations, upgrading Police Academy facilities , ensuring appropriate equipment for the organised crime department and support to preventive and repressive measures in the field of the fight against money laundering

6.2.7 Assistance to Serbia

A project with the Council of Europe strengthened capacities to fight economic crime, including money laundering, terrorist financing and cybercrime¹⁰. Two IPA funded projects over the 2009 and 2010 programs were subsequently approved, with total budgets of € 4.5 million. One is to support the Seized Property Management Directorate of the Ministry of Justice and other key institutions involved in the discovery, expropriation, confiscation, management and seizure of property acquired in criminal activity. The other project is to enhance capacities of key institutions to prevent and control money laundering, economic and financial crime and strengthen the interagency cooperation, in accordance with the European and other international standards and best practices.

6.3 Results Achieved

In **Albania** the formal framework for fighting organised crime has improved rapidly, with a number of new laws on the books and the Office of National Anti-Trafficking Coordinator established. While the, implementation of these laws and the capacities for investigating and prosecuting organised crime have improved they still can be enhanced significantly. There is some progress in fighting human trafficking, organized crime and money laundering as well as drugs. There is a need for much closer cooperation between the various institutions fighting organized crime: prosecutors’ office, police, customs. The ROM reports on these projects give the following marks: all five ROM reports provided a “B” on Efficiency while 4 out of 5 awarded a “B” for Relevance, Probable Impact and Likely Sustainability.

In **BiH** the fight against organised crime does not have real results to point to. The only ROM reports relevant are for projects funded under the CARDS programme. The key project was to process cases, “*in particular related to financial crime*”. Because of its strategic importance the project was subject to fairly intensive monitoring, but was given the exact same rating on all five dimensions each time – a “B”. In light of subsequent developments, the ratings on expected impact and sustainability in particular appear optimistic.

¹⁰ A number of draft laws were also prepared: (i) the Law on Managing Seized Assets (Adopted); (ii) the Law on Agency for the Prevention of the Corruption (Adopted); (iii) the Law on Organisation and Authorities of the State Bodies in Combating Organised Crime (Pending); (iv) the Law on Liability of Legal Persons (Adopted); (v) the Law on the Ratification of the Cybercrime Convention and its Additional Protocol (Adopted); and (vi) the Law on Prevention of Money Laundering and Terrorism Financing (Adopted).

In **FYR Macedonia** the legal framework for fighting organised crime is largely in place: a number of laws have been passed that address key concerns (money laundering, conflicts of interest, border surveillance, national criminal intelligence data etc.); strategic documents have been developed and adopted; and an institutional framework is in place, focused on the Office for Prevention of Money Laundering and Prevention of Terrorism; the Centre for Suppression of Organised and Serious Crime; the national shelter for victims of trafficking; and specialized court units authorized for ruling in the cases of organized crime are established within the basic courts in five cities. Only two ROM reports address organised crime, both providing “Bs” on all dimensions and thus overall giving the projects reviewed good marks for efficiency, results and potential sustainability.

In **Montenegro** reports on results is positive though actual achievement is not evidenced. For the purpose of future programming and in particular an effective introduction of the sector based approach, results reporting will need to be more disaggregate and fact based. There are discrepancies between the assessment of ROM reports and observations of informants. For example the ROM report states that *“target groups have been properly and successfully trained”*, giving an “A” for Effectiveness, while training quality was one of the most criticised aspects during interviews: the co-ordination, the level of knowledge imparted by trainers, and the relevance of trainings are frequently seen as inadequate.

In **Kosovo**, because the anti-organised crime projects were launched recently, there are no ROM reports and no concrete achievements to report. Furthermore, many of these projects will provide equipment or buildings which will probably be positive but may not directly impact on organised crime. The recent IPA 2011 project on asset management and economic crime appears the more relevant in terms of potential impact on organised crime.

In **Serbia**, the legal framework has been substantially improved, cross-border smuggling has been reduced and a number of organised crime networks dismantled or at least weakened and/or pushed out of Serbia. While Serbia benefited from a number of cross-border projects, it is the local project against money laundering and terrorist financing (MOLI) that was given the most positive ratings in the ROM reports.

The **regional cooperation** between prosecutors, which is particularly important in the Western Balkans for an effective fight against serious and organised crime, has improved as a result of CARDS assistance. Opinions seem to vary on the extent to which the number of cases investigated and prosecuted as a result of this has actually increased. But the experience is that when externally funded projects involve the establishment or initial support of new or relatively novel organisational frameworks, questions of sustainability should be addressed before funds are committed. Where medium-term expenditure frameworks and budget programming systems do not exist, as is the case in most of the countries in the region, the effectiveness and long-term sustainability of donor assistance will be difficult to assure.

6.4 Findings and Conclusions

- The fight against organised crime is a fairly recent field of EU assistance, and has generally received limited funding so far, as noted in the various country reports. Focus has been on strengthening particular units of relevant ministries or in the police, and/or setting up anti-laundering offices and links to financial intermediation actors (banks, import/export financing mechanisms, foreign exchange houses etc.).

- The formal legal framework is generally improving, though in several countries laws on money laundering, confiscation of gains from illegal activities, the management of such assets once confiscated and other measures to combat organised crime, are inadequate.
- Most countries have established anti-money laundering units, and training and collaboration with relevant authorities is improving, including cross-border collaboration, but in most countries relations, links and formal roles need to be clarified and strengthened.
- The control with cross-border smuggling of weapons, drugs and human beings (trafficking), has received increasing attention, and regional collaboration has generally improved. Several states do not yet have operational agreements with pan-European bodies like Europol due to shortcomings in own systems, laws and controls.
- In several countries, when the police are able to arrest suspects of organised crime, the justice system has often not been able (or willing) to prosecute, so more attention needs to be paid to what exactly is holding back progress in this field. The success rate in cases involving local political-criminal partnerships appears to be particularly poor.
- While weak technical skills and limited resources remain a serious bottleneck to fighting organised crime, a key challenge for improving performance is the lack of cooperation between and among different bodies across jurisdictions, and behind that the lack of commitment by political leaderships in taking on this sensitive issue.
- Yet political commitment is a key factor for the success of Rule of Law assistance in general and for measures against organised crime in particular. Political commitment could increase if projects against OC were designed and/or implemented jointly among main donors. Political commitment could also increase if progress against OC were regularly assessed based on detailed indicators and if results of these independent assessments were made public.
- Across the region, Progress Reports stress the need to establish efficient institutional mechanisms for inter-agency cooperation. A sector approach would help facilitate such cooperation where activities do not just target individual agencies but include activities that aim at strengthening information sharing, co-ordination and joint action among relevant agencies. In some states, a strong co-ordinating body may be a useful mechanism for ensuring this.
- Due to the long-term nature of this task, there should be a focus on a few priorities providing sustained and consistent assistance in successive years, where the sub-sector of criminal asset recovery is one of the most promising.
- **Impact and Sustainability of EU assistance** cannot really be assessed at this early stage of support. While a number of ROM reports provide quite optimistic opinions regarding these future results, actual performance is likely to vary considerably from country to country, largely as a function of how deeply embedded organised crime is in society, and in particular how closely connected important crime gangs are with political leaders and forces. Combating organised crime when it has been able to establish linkages to the political-economic elite is a long and difficult challenge.

7. Summing Up and Looking Ahead

This chapter looks at the “lessons learned” coming out of the country studies, and then moves on to the recommendations for the future.

Regarding the lessons learned, these are in two parts. Section 7.1 looks at the evaluative questions posed to the team based on the reviews of results achieved. Section 7.2 summarises the views of stakeholders regarding their experiences on previous and current EU funded activities, and their views on how the EU might achieve better results in the future. These views are grouped into four categories: (i) general framework conditions for Rule of Law work; (ii) programming of IPA funds; (iii) implementation of the activities; and (iv) how results are monitored, reported and used.

Section 7.3 then presents the key recommendations, structured into these same four categories.

7.1 Addressing the Evaluative Questions

The eight evaluative questions are presented in section 1.2 and were grouped into four categories:

- **EQ 6, EQ 7, *intervention logic*** relevance and efficiency: they were looked at in section 3.2.
- **EQ5** asks about lessons from other RoL interventions, which was addressed in section 3.3.
- **EQ1, EQ2** ask about ***strengths and weaknesses*** of assistance and reforms, and this is presented in section 7.1.1 below.
- **EQ3, EQ8** ask about ***impact and sustainability*** of EU assistance, and this is discussed in 7.1.2 below.
- **EQ 4** is a follow-on question to EQ5, asking how these various lessons can be used in future programming. That is essentially what section 7.3, final Recommendations, does.

Section 7.1.3 summarises the overall findings and conclusions regarding the evaluative questions.

7.1.1 Strengths and Weaknesses of Assistance and Reforms

Through the analyses presented in the previous chapters and the conversations on the ground, a series of issues were identified that stakeholders across the region acknowledged as the more important ones. These are presented below, where the attempt is to provide the more general/ structural ones to begin with, and then “drilling down” to the more concrete and specific issues.

First the issue is noted (the headline), a description of the problem and what has happened is provided, before the team presents its findings and conclusions regarding the EU contributions and role (the “arrow point” paragraph).

The conclusions may in fact include a recommendation, but unless it is at a more strategic level it will not be picked up again in the final section. This is to avoid over-burdening the larger Recommendations section, which is to focus on a more limited but strategic set of steps the team believes should be taken. But the more specific recommendations may still be of interest and thus are highlighted by being in *italic* at the end of the Findings and conclusions paragraph.

Legal and institutional frameworks coming into place. Across all three sub-fields, it is clear that with the support of EC assistance, significant improvements have taken place when it comes to basic framework conditions. More, and more appropriate, laws have been passed, and in some cases the entire legal philosophy underlying the legal system has changed (as the case with the amendments of

the criminal procedure codes shows), from an inquisitorial system based on civil law traditions towards an accusatorial (adversarial) system more frequent in common law traditions, such as in Bosnia and Herzegovina, Croatia, FYR Macedonia, Serbia¹¹. The change from a centrally-managed economy to a market-friendly one, and from a court system largely meant to protect the state's interests to a system of basic rule of law with checks and balances as basic foundations has both accorded the courts a different role but also very different responsibilities. These transitions and transformations are part of very fundamental structures of society and thus represent some of the more challenging changes to implement. The fact that these processes have largely taken place is a major achievement, and the EU through the years has clearly been a driving force both at the political/policy level, and with funding.

- EU support to overarching legal and institutional frameworks has been critical and produced important results at Output level. Results at Outcome level are so far less clear because there is for the time being not a rigorous tracking system in place that can document achievements this far out the results chain.

Court systems restructured, modernised. The court system has in some cases been totally restructured/rebuilt, both because a number of new states have come into being, but also because the new role for the court system means that it needs to address a different set of issues and clarify roles and responsibilities between actors. Again the EU has been important in supporting this, both on the physical infrastructure side through the building or refurbishing of court houses, but also by introducing modern ICT systems for more efficient case load handling.

- EU support for modernizing the court system in a number of the countries has been important for providing operationally functional courts, often with modern ICT equipment to handle court cases better, with greater efficiency, impartiality and transparency. Rigorously assessed Outcome results have not been recorded though a number of cases provide convincing anecdotal evidence that modernising case management systems has improved efficiency and transparency of case handling, and that further progress is likely in the future (depending on political will ...). *Tracking court performance and the public's perceptions of court and justice sector performance should be a concern to the EU.*

Justice sector often restructured. The structure in the justice sector has generally improved, with ministries attending to the development of law, policies, planning and budgeting; independent judiciary and prosecutorial councils of various constellations established with important independence, considerable vetting processes (Bosnia, Kosovo, Serbia)¹², proposal and quality assurance responsibilities; better coordination mechanisms have been put in place to ensure collaboration between different bodies to successfully address complex crime such as money laundering and corruption. In a number of countries, the EU has supported the development of complementary justice-related bodies such as bailiffs and alternative dispute resolution mechanisms.

- Modernisation of the justice sector to approximate EU structures is progressing, with the same caveats as above: the Outputs are being produced, and are important, but resultant Outcomes are still to be systematically recorded.

¹¹ This is not necessarily claiming such a transition is desirable – the team just notes that this is happening.

¹² The vetting processes are not without complaints and reversals. Political interests have systematically tried to intervene and influence selection processes and decisions.

Links to larger Rule of Law principles not addressed here. When it comes to more comprehensive Rule of Law systemic changes, this team was not asked to look at other components that need to be in place so that the principles of separation of power with enhanced transparency and accountability are in place. In this larger context, it would be useful to understand what has happened to parliaments and their roles and abilities as law makers, oversight and control bodies; the roles, mandates, independence, capacities of various internal oversight and control bodies such as the supreme audit institution, internal or administrative inspectorates (often important in parts of former Yugoslavia), and others.

- The EU needs to link its justice sector programmes to larger Rule of Law principles and structures in particular to build internal oversight and accountability structures and principles and ensure coherence and comprehensiveness of support and results.

Missing links to public finance management issues. The links to public planning, budgeting and accounting – public finance management (PFM) in general – has not been looked into. One of the problems in several of the countries is the weak linkages between policy formulation and budgeting within a sector, the links between the sector’s planning/budgeting to the larger PFM cycle, and the independence of financing for the judiciary. Medium-term fiscal and economic frameworks are often missing, so the possibility for a sector to program based on predictable and policy-driven allocations is often missing.

- A key challenge to most of the justice sector projects is lack of predictable and sufficient funding. An improved PFM system, and tighter links to PFM cycles, are required for success.
- *The principle of independent planning and budgets for the judiciary, if not already in place, should be of concern to the EU’s future Rule of Law work.*

Organisational development taking place, at uneven pace. While the overarching sector structure has developed quite well, the public bodies that are to play key roles in a modern justice sector are evolving at different rates, partly dependent on country, partly on some structural features. New actors such as judicial and prosecutorial councils get in place fairly quickly, in part because there is no need to “un-learn” and “un-do” previous structures, histories and embedded interests, partly because these are fairly small and highly professional bodies: their mandates are clear and while their competencies may be challenged (such as the HJPC in BiH), that is often for political and not technical/mandate reasons. Transforming and building larger bodies like a police force takes time – putting up a new police unit such as one addressing money laundering is simpler: new field, small office, focus on technical skills. Overall, organisational development obviously moves better when there is a reasonably coherent public sector structure in place than when the environment is contentious (easier in Croatia than in BiH; easier in Republika Srpska than in the Federation of BiH). Within this context, EU has provided important support to both existing (ministries, court administrations, ...) and new actors (anti-corruption agencies, judiciary/ prosecutorial councils, anti-money laundering/financial intelligence units, ...) to build capacity that can address legal cases, corruption and organised crime.

- EU has provided funding for organisational development of a range of key public actors to strengthen, restructure, build capacities. Output results have varied from successful (judicial and prosecutorial councils; legal training academies/centres; integrated court management systems) to the unsuccessful (anti-corruption agencies without funding, staffing, political support to carry out mandate). Some Outcomes have been recorded (vetting and (re)appointments of judges and prosecutors through new councils in several states).

- The differences in the pace of organisational developments across states appear to be increasing, meaning the challenges are becoming relatively greater in some states than in others.
- Organisational development is necessarily a long-term proposition, so even if an agency is not functional today, the fact that it exists with a mandate is an important foundation for future efforts – when the context has become more supportive of progress.

Organisational development is more about corporate culture than technical skills. An important challenge for organisational development in most Western Balkans states is developing a strong corporate culture around principles of good governance and the formal mandates of the organisation. While technical skills can be transferred to individuals, the overarching corporate culture needs to be developed, accepted, assumed and turned into consistent behaviour across the organisation – and this is a long-term process in any organisation in any country. It is, however, particularly difficult when values of the corporate culture clash with the interests of powerful elites, which is documentably often the case in the field of rule of law. The EU has been supportive of raising and addressing this issue particularly through regional projects that promote peer learning and insight, through the promotion of international standards and codes over and beyond the *acquis* (such as Council of Europe standards, UN standards in fields like corruption, etc.), and through increasing involvement and commitment to pan-European bodies like Europol, Moneyval, etc.

- Changes to corporate culture that are reflected in changes in actual behaviour are critical to the sustainability of improved Rule of Law results. While challenging – but not impossible – to document, they are critical for assessing the real potential for progress.
- *Innovative work to identify changes in attitudes and performance carried out by local knowledge centres could be a useful value-added component in the EU's monitoring system.*

Organisational effectiveness is a lot about local political will. While a number of bodies have been able to improve their mandate, structure and skills, actual performance varies. Without political support to implement mandates, inter-institutional collaboration suffers (anti-corruption agencies with little support from police investigations, inadequate reporting by financial agents on trans-border transactions to money-laundering units, etc.), lack of follow-up on identified problems (reports to parliaments, by watch-dog bodies etc. do not lead to decisions or request for action). While this is not surprising or unexpected, it is a critical challenge to the EU programmes since it means that reforms and capacity building are not being transformed into action on the ground.

- In fields where there is currently lack of political will, more comprehensive approaches to overcoming bottlenecks based on in-depth knowledge is required. *The EU's own Sector Governance Analysis Framework (EuropeAid 2008) or a standard political economy analysis, carried out by local knowledge centre/s, could shed light on how better to address the issue.*

Organisational development faces larger human resources challenges. Many of the public bodies have problems attracting and retaining the right kinds of skills. As noted in a number of the Progress Reports across the region, public administration reform remains a challenge: the public sector is often not competitive when hiring particularly more advanced skills. The typical response from organisations or projects is to train individuals for needed tasks, but the experience is that these newly-trained staff will leave as soon as their skills have become more attractive on the labour market or as soon as there is a change in the political powers running the new government. Addressing the larger market demand by improving/increasing judicial training academies etc. is a more sustainable response for general skills. For specialist areas, more innovative approaches need to be found, because otherwise the international community will continue to confer large-scale private benefits on

particular individuals rather than building organisational capacities. Non-wage incentives, bonds for “re-paying” costs of training, other systemic means of retaining staff should be identified before further funds are spent on training that is likely to encourage staff to leave for new jobs.

- Human resources management is a key stumbling block for organisational development and sustainability, and more innovative approaches in the short run and more labour-market friendly steps in the medium term are required.
- Training centres/institutes are key to longer-term equilibrium in labour markets, but their relevance has been questioned in several states because major beneficiaries (judges, prosecutors) are not sufficiently involved in curriculum development and priority setting.
- *Functional reviews based on strong political commitment should continue to be carried out to restructure and adjust the public sector workforce and align it to overarching sector reform strategies, policies and changes in legislation.*

Infrastructure support is important but only supplementary. Infrastructure support – construction, rehabilitation, vehicles and equipment – are important components of judicial reform programmes, and tend to absorb the lion’s share of funding. Two factors may explain why there may be a relative over-investment in infrastructure, however: (i) everybody wants more infrastructure, and politically it is non-controversial so it is easy to come to agreement, (ii) the short planning cycles makes it easier to define the supply components compared with the complex issues surrounding organisational development. While there is no doubt an almost limitless legitimate need for more infrastructure (a good physical work environment, access to “tools of the trade” are powerful non-wage incentives for retaining staff) and there may even be arguments for this at political level (political access and support through funding priority wishes on a sector list), a number of observers believe there should be a critical review of the resource allocations between the functional areas of support.

- Sector programming may provide the framework for more coherent and balanced programming of resources across infrastructure, capacity building, institutional development though it is not obvious what criteria for allocations should be – it will be context dependent.

Good technical assistance personnel make a difference. A common observation was that “a good technical expert can save a poor project but a well-designed project cannot overcome the failings of a poor expert”. These comments were typically heard in the context of EU-funded experts who did not function well under local framework conditions: had a case law background and not able to accommodate common law approaches; were too young to have the administrative-political experience to drive a process; had strong theoretical but little practical on-the-ground experience for adjusting principles to reality; etc. The common plea was for more rigours selection of experts, stronger local voice in final decisions, and preferably that the contract was managed by the beneficiary institution and not the donor so that performance reviews and decisions on possible abrogation of contracts lay primarily with the national body.

- Technical assistance/twinning arrangements should be more locally owned and managed, provided that effective accountability and oversight mechanisms are in place. Ex post verification should be used rather than ex ante permissions.

7.1.2 Impact and Sustainability of EU Assistance

Most impact and sustainability information comes from ROM reports. The only source of external assessments that systematically tries to record likely impact and probable sustainability of EU

funding, are the ROM reports, but because these are instruments that are based on snap-shot visits they are not appropriate vehicles for longer-term performance monitoring.

- The team was struck by the paucity of other forms of results monitoring of EU assistance to this politically important but highly complicated field, and in particular of the lack of *ex post* evaluations.

ROM reports are structurally biased in favour of positive ratings. ROM reports are “real-time” monitoring, based on short visits that take place during project implementation. This means foreign funding and experts generally are still in place – ROM missions are assessing activities at a moment in their life-cycle when they are most likely to appear successful: political support and protective oversight is provided by an important external actor (EU), funding is guaranteed through the project agreement and thus is less subject to capricious re-allocations by local authorities (for example after an election), the (highly-paid and highly-motivated) foreign experts are there to drive processes etc. The underlying dimensions of the Background Conclusion Sheets (BCSs) try to take account of this by asking forward-looking questions but the informational base for the mission remains the data and impressions at that moment.

- The Impact and Sustainability ratings have a structural upwards bias in their assessments.

Sustainability facing challenges due to economic and fiscal crisis. The Western Balkans have been hit by the general economic malaise across Europe – some states more so than others. But that means that the current economic downturn is creating a fiscal crunch, necessitating cut-backs on many budget posts. Sustainability assessments should thus take this overarching macro picture into consideration, as it may mean that there needs to be a tougher prioritisation also on rule of law interventions: the medium-term fiscal prospects are such that sustainability of current plus additional foreseen activities may not be possible to maintain. The lack of medium-term economic frameworks and their derived fiscal frameworks is thus a more serious problem during economic downturns than during periods of more continuous growth.

- Sustainability ratings may overrate likely future situations as the budget constraint is likely to be used by political decision makers to restrain and control pro-active *Rule of Law* actors.

Institutional change is more sustainable than organisational change. Changes to institutional arrangements, laws, mandates and procedures do not require much in terms of fiscal resources, and once in place are very visible: any change to a law has to go through a known process that can be monitored and thus challenged. Organisational development, however, is a much slower, complex and inward-looking transformation: external actors have difficulties seeing and understanding the process, including when it stagnates or components are reversed (loss of capacity, of leadership, degradation of internal participation and ethics, deliberately setting wrong priorities, accommodating external pressures etc.).

- Organisational change where subtle yet long-term dimensions like “corporate culture” are central, are likely to suffer reverses/be less sustainable than often believed.

Impact in public sector so far is highly variable. In some areas, strengthened Rule of Law action has produced tangible results: data on arms smuggling and human trafficking show significant decreases; some important criminal milieus have been dismantled, weakened or exiled; the back-log of non-contested cases have in some countries been handled more expeditiously or handed over to more flexible mechanisms. In key areas, despite considerable efforts, there is clearly no impact: in most states Progress Reports and independent watchdogs note the lack of successful prosecution of

high-level and political corruption, despite the overwhelming evidence that this is a continuous and serious problem. Independent bodies like ombudsmen, public procurement offices and others see that their reports are not being studied or recommendations implemented despite the technical solidity of the reports and the appropriateness of the recommendations. Parliaments by and large do not seem to assume their control and oversight function, thus not providing the required political support for technical bodies to have an impact.

- The EU currently does not have a system for tracing longer-term Impact of its support in these three sub-fields of the Rule of Law. There is considerable anecdotal evidence on specific cases, and together they undoubtedly provide a picture.
- *For identifying attributable results a more systematic and research-based reporting system needs to be put in place, preferably locally owned and managed over time.*

Impact on non-state actors non-existent. While EU funding focuses on state building, there are also significant amounts provided to various CSOs. These allocations are much more project and short-term based, however, with most of the funding meant for producing specific project Outputs rather than building internal long-term capacities. ROM monitoring does not cover these activities since they tend to be small and short-term. Feed-back from CSOs is that longer-term Impact on societal parameters – such as more accountability by RoL actors due to EU funding – presently does not exist.

- Innovative small-scale results tracking on non-state actor engagement in Rule of Law sub-sectors could help provide a richer picture of achievements in this contested field.

7.1.3 Summing Up: Lessons Regarding EU Assistance

Intervention Logic: Relevance and Efficiency

EQ6: Intervention logic/relevance: To what extent has financial assistance addressed the priorities outlined in key enlargement strategic and policy documents in the area of rule of law, judiciary, fight against organised crime and fight against corruption?

- At the aggregate financing level, the *share* of available IPA funding allocated to addressing the judiciary and fight against corruption and organised crime is uneven across countries but the *trend* is towards increased allocations, with more earmarked funding for the fight against organised crime and corruption.
- Overall, funding levels and shares appear limited compared with both the importance accorded these fields in EU strategic and policy documents, the severity of problems faced on the ground, the time that is required to produce visible and sustainable improvements in fields that are highly contentious yet represent the priority chapters 23 and 24 in the accession dialogue.

EQ7: Efficiency: How efficient is the selection of interventions to address priorities in the above areas?

- Project selection formally follows a process from overarching EU policy to MIFF to national MIPD to national project identification (see figure 2.1). The MIPD provides a three-year funding horizon that should provide predictability for the medium term, but since it is revised annually it basically only determines the current year's funding allocations.
- Annual project identification and preparation cycles are experienced as hectic, provide incentives for coming to closure quickly and thus discourages addressing more complex consensus and

programme matters (in Bosnia they tried to address this by splitting the 2008 IPA into two programmes, for “quick” and “other” projects, but found this was not helpful).

- Regarding judicial reform financing, where independence of the judiciary and separation of powers is fundamental and the need for separate funding for the judiciary thus is often a pre-requisite, a programming process that is managed by the Executive as focal point (ministry of justice or similar) sets up a conflict of interest-situation in the resource allocation making process. In a number of countries, sector stakeholders outside the Executive also noted that they often are fully involved in the programming, further weakening the structural features as far as efficiency of programming is concerned.

Strengths and Weaknesses of Assistance and Reforms

EQ1: Which have been the weaknesses and strengths of assistance and related reforms in achieving results?

- As with other cooperation, local political will and ownership is the fundamental pre-requisite, and secondly local capacity to plan, implement, monitor and develop the activities over time. The challenge often faced in the Western Balkans is that there is not strong political support for a number of the transformations, capacity development and financial commitments required for rule of law, anti-corruption and organised crime policy to be implemented in practice.
- On the EU side, its clear commitment to the long-term relationship and support for local capacity development; its permanent presence with staff on the ground who are able to maintain both policy dialogue and project management oversight; the large-scale, continuous and predictable funding; the clear linkages to the accession process; the breadth and depth of its assistance programme in terms of sectors and actors; the ability to support and promote trans-border regional collaboration across most sectors; the depth of policy development, standards and partnerships; all make the EU a special political and financial partner. Its political agenda is transparent and spelled out in its various policy documents – all publicly available – as are the rules and regulations that surround the financial assistance. *Predictability* is thus very high – a valuable aspect in periods and situations of financial and political instability.
- In complex fields such as organisational development, the projects that have delivered positive results have tended to be long-term, with permanent resident committed advisory staff, such as the establishment of independent judiciary/prosecutorial councils and the vetting of judges/prosecutors. In fields that address *acquis* dimensions, having advisory services provided through a twinning agreement has usually been positive, both because of the relevance of the skills set being provided but also because the foreign institutional partner may contribute to the larger corporate culture of the beneficiary organisation (Ecorys 2011).
- Short-term projects, organisations that are not able to attract and retain skilled staff and thus have high staff turn-over or are permanently under-staffed, projects where external technical advice is not appropriate or is not available to the project when it is needed, and bodies that are not able to establish necessary collaborative arrangements with complementary agencies usually do not produce useful results.

EQ2: Which lessons can be learned from the implementation of assistance and how can these lessons be embedded into future EU pre-accession programming?

- Focus on getting the basic frameworks in place (clarity on roles and responsibilities, legal foundations etc.) through strong political and financial commitments by the EU has been

fundamental to ensuring what on the whole has been a successful restructuring and modernisation of the justice sector across the region. Having these frameworks in place is fundamental to future improvements in Rule of Law observance in the region.

- The programming process needs to accommodate the challenges that the judiciary sector faces: (i) the need for a realistic understanding of what the priority steps need to be to improve performance in priority fields such as anti-corruption, (ii) ensure a programming process that includes state actors outside the executive (judiciary, legislature) and non-state actors who contribute to improving accountability of justice sector institutions, (iii) track performance along agreed dimensions using instruments that actors concur are reliable and valid. – These needs can be accommodated under the foreseen IPA II programming with its seven-year (2014-2020) implementation horizon.
- The real challenge is overcoming political apathy or active resistance to such reform. This can only be achieved through local actors and forces mobilizing, but the EU can play an active supportive role. This will require a much better understanding of local actors, their motives, resources and alliances, and thus a long-term programme of support to a possible agglomeration of non-state actors.

Impact and Sustainability of the Assistance

EQ3: Which are the types of assistance and reforms (legal and institutional) as well as their sequencing that have achieved the most sustainable results in transition countries?

- The restructuring of fundamental frameworks have been the most important and sustainable results: they represent the foundations for all subsequent rule of law work and capacity building; because they are structural features they are not dependent on a continuous flow of resources, they are generally quite “visible” (laws, mandates, roles etc. are formalised, legislated, politically approved, ...) and need to follow particular procedures to be changed. These procedures are generally open and known and not necessarily easy to manipulate and thus to some extent protected from “political capture”.
- The sequencing of beginning with fundamental structures and then support the organisations required to implement new, revised or re-confirmed mandates makes sense since there is thus foreseen stability and predictability on what core responsibilities and competencies are to be.

EQ8: Impact/Sustainability: What are the key factors having an influence on the impact and sustainability of assistance in the above areas?

- Longer-term projects are clearly more likely to produce impact than short-term ones. Those with sufficient political support or own clout – independent judicial councils, for example – are also able to maintain their agenda and thus deliver continuous improvements in performance.
- Defending and improving the independence and professionalism of core judicial institutions like Councils, court supervision bodies, supreme/constitutional courts is a continued pre-requisite for sustainability and impact of legal reforms.
- Predictable and sufficient funding is a key pre-condition for sustainability, and independence of funding for the judiciary from the executive parts of the legal sector is important in this regard: political forces will often use their possible power of the purse to influence judicial behaviour.
- Ability to attract and retain key staff, to maintain and develop capacities, institutional memory and building of long-term relations to collaborative partners nationally and abroad, is key to both

sustainability and ability to deliver impact. This requires that there is a long-term strategy to ensure that imbalances in the labour market for legal skills will be addressed, that the legal sector understands which factors constitute positive and negative incentives for skilled labour to want to work for the state: non-financial incentives can be powerful factors for attracting the desired skills (clear career paths, meritocratic promotions, ability to move “horizontally” into new and interesting fields without losing seniority, good working environment, structured exposure to international knowledge and learning, moral support for taking on difficult tasks, assessment criteria that are transparent and seen as promoting rule of law [quantitative ratings such as number of cases handled or solved are powerful disincentives to take on corruption and organised crime cases which are long and challenging to win], internships abroad, attendance at conferences, encouragement to write journal articles ...).

Other Lessons on Rule of Law Interventions

EQ5: Which lessons can be learned from other transition countries? How could these lessons be taken into consideration in the programming and reform process to the Western Balkans?

- The inter-linkages between corruption in the public sphere and organised crime is obvious and strong across the region. The crime is becoming more sophisticated in its form and organisation, and using modern business instruments to shield activities from insight and assets from seizure. The perceived increase in the attempts by political forces and criminal actors to intimidate and influence the judiciary is of considerable concern and needs to be addressed a lot more aggressively than seems to currently be the case.
- There is a lack of in-depth and research based knowledge about corruption, organised crime, how they interact, what are the specific inter-linkages and vulnerability points in the different countries and settings, and thus lack of insight into what are the best approaches for addressing these problems.
- Participatory programming and training relying on local/regional expertise improves results, has the advantage of easily crossing linguistic, cultural and experiential, and especially weaker administrations have been able to learn and develop their own capacities faster (“the benefit of the late-comer”). The importance of training of large numbers of staff is noted as important, both to transmit technical knowledge widely in an organisation but also to inculcate values and standards – “corporate culture”. In this connection, the ability to provide clear standards and translate into local languages has been critical for introducing and embedding such standards in the laws, regulations and standards in the different countries¹³.

EQ4: How can they be applied in the Western Balkans countries?

- This is addressed in the form of the Recommendations in section 7.3.

¹³ There is often a frustration at the lack of easy-to-transfer lessons from other situations – that we do not seem to learn! The problem is that successes – just as failures – tend to be context dependent, so the transfer value of the experience may be limited. In the field of anti-corruption, for many years the best known and most used case was Hong Kong’s Anticorruption Agency, which was then attempted replicated many places with few results but at a high cost. Then came “control from below” (examples include the Kecamatan program in Indonesia and education costs in Uganda), but when rigorous impact evaluations were done (randomized control trials), a big part of these stories also fell apart. What is being presented here are the main factors considered important for positive results. But the actual mix and application has to be determined by local context – not least of all the counter-forces one will be facing.

7.2 Lessons from Local Stakeholders

Field work carried out May-June 2012 across the Western Balkans led to a long list of issues being raised. While different stakeholders were concerned with different matters, across the region there were issues that consistently came up. What follows are summaries of concerns raised, grouped into four categories: (i) general framework conditions for EU funding; (ii) programming IPA resources, (iii) implementation of activities, and (iv) monitoring and reporting results.

Again the issue is first noted (the headline), the views and experiences are provided before the team presents its findings and conclusions (the “arrow point” paragraph).

7.2.1 Framework Conditions for EU Funding

“State capture” a serious threat to Rule of Law reforms. The concept of “state capture” is defined by the “U4” anti-corruption centre as *“the phenomenon in which outside interests (often the private sector, mafia networks, etc.) are able to bend state laws, policies and regulations to their (mainly financial) benefit through corrupt transactions with public officers and politicians... State capture is recognised as a most destructive and intractable corruption problem, above all in transition economies with incomplete or distorted processes of democratic consolidation and insecure property rights”* (www.u4.no/glossary). The existence of such particularistic interest groups within political structures in Western Balkans states is widely recognized. A number of the EU Progress Reports note that there are insistent attempts at political interference with the judiciary, to influence selection and appointment of judges and limit the cases and possible punishment in cases that touch on these actors and their interests. In some of the states, this problem may constitute the single most important threat to Rule of Law progress, and thus needs to be addressed as such.

- The intersections between politics and the legal system must be made transparent so that the fundamental concept of separation of powers is not violated
- *(i) In-depth political economy analyses that document ownership and influence structures should be supported, (ii) public planning and budget processes should be transparent; (iii) effective watchdog institutions – inside and outside the state – and democratic oversight of the state’s monopoly exercise of power (armed forces, intelligence services) should be strengthened, (iv) assessment or peer review missions focussing on the issue of (political) interference with the judiciary should help raise awareness regarding how such interference damages the development in the Western Balkans.*

High tolerance for corruption. A number of informants noted what they believe is a high tolerance for corruption among the population, for a number of reasons: its prevalence in the everyday lives of most people; the perception that top politicians are involved; most media not interested in covering corruption; few success cases pursuing corruption among the powerful and wealthy; general fatigue coming from a difficult economic situation for most. There is thus little enthusiasm and hope that fighting corruption, organised crime and other failings of the legal system will lead to any practical improvements in the daily situation of most.

- The EU may look into a diagnostic study that identifies which levers of change are the most likely to generate support from the population for more sustained judicial reform.

‘Corporate culture’ is a major issue. The tradition from the socialist period of executing orders rather than being an actor that reflects critically around how better to deliver on own responsibilities is a major challenge across the public sector. Another is the formalism: if something is not explicitly legislated or put into a rulebook, it is difficult to implement. This tradition is reinforced by a political

establishment that often does not want to be held accountable for poor performance and illegal acts. The judiciary thus more than perhaps other sectors requires a “modern” corporate culture in order to fulfil its proper role. One can see such a shift particularly in new structures such as judicial and prosecutorial councils which in some states have benefitted from long-term high-quality hands-on external expertise (international prosecutors and judges).

- Longer-term stable technical assistance/twinning partnerships to develop appropriate “corporate culture” should be a core concern when designing support to judiciary institutions.

‘Champions of change’ exist but have limited voice. There are CSOs that track dimensions of rule of law, and public control bodies such as supreme audit institutions, various internal inspectorates, ombudsman’s offices and so on that in many cases produce important reports but which are often not acted upon by parliaments. Many of the public anti-corruption bodies have limited mandates or capacities which is a powerful negative signal to other actors: they do not have to comply with anti-corruption legislation and principles because the public sector will not prosecute and follow up. CSOs are often involved or even contracted to help monitor implementation of various anti-corruption measures but generally do not have sufficient resources to do in-depth tracking and substantive analytical and dissemination work.

- It is important to empower actors that can play a rights-holder’s role vis-à-vis public authority, to push for compliance of those key laws and frameworks that are in place.
- *CSOs that are given monitoring tasks need to be provided the resources to carry these out while ensuring that their independence is respected.*
- *Particular attention needs to be paid to making anti-corruption bodies operational and effective because of the signalling effect to society at large and politicians in particular.*

Incentives for ‘champions of change’ are often negative. People who have identified cases of corruption and organised crime have been physically threatened, judges and prosecutors have little protection, and protection of whistle-blowers is poor and not properly addressed in legislation. The pressures to increase the productivity of the legal system means nobody wants to prosecute corruption and organised crime because these are highly time- and resource-intensive cases and thus hurt possibilities for promotion. There is a high risk of reversal of decisions of such cases in appellate court, in which case the time and effort spent is wasted.

- The problem of negative incentives for key actors should be analysed and possible changes introduced as part of a more holistic program for judicial reform.

7.2.2 Programming IPA Resources

Sector and Donor Co-ordination. General sector and donor co-ordination is too weak, often *ad hoc*, and needs to address duplication, lack of alignment or co-ordination on specific issues.

- National authorities clearly should be in the driver’s seat, but where they are not assuming this role, the international community must find mechanisms to ensure policy and funding coherence in this critical field.

There is no unique methodology applied to strategy development. Existing strategies are rather disparate with regard to the process in which they have been developed and their structure. Most strategies and plans become long lists of objectives and activities without clear prioritisation, criteria for selection, assessment of budgetary consequences, let alone financial commitment. Such

strategies therefore do not provide real priorities and become inadequate as foundations for a sector approach.

- National authorities, in consultation with local stakeholders and international partners, should agree on a methodology for preparing strategies and policies in terms of process design and structure.

Understanding totality of transformational challenges and costs, ensuring sustainability. Many informants believe that the international community has been pushing large-scale changes in laws and frameworks across the region without completing the task: bylaws and complementary regulations are often missing, changes in roles and responsibilities are not made clear, and staff are not properly trained and thus cannot apply the new laws as intended. In some countries the massive reforms meant that they got a new court system, new laws, new judges and prosecutors all at the same time. There is a need to ensure that all these complex changes are fully supported.

- Support to justice sector must be long-term and comprehensive.
- Success criteria must cover entire delivery chain: production of new frameworks, laws, bylaws and regulations; capacities to investigate, prosecute, judge and incarcerate; actual prosecution of priority cases reflecting accountability of system and equality before the law.

Sectoral approach is important but requires solid foundations. In a number of the states several steps have been taken to move towards sectoral programming, in line with the idea that IPA II (2014-2020) will largely be based on this. In most countries it is clear that neither institutional set-up nor budgeting processes are sufficient for a genuine sectoral approach to work: few countries have real sector programmes that consist of prioritised and costed interventions which in turn are embedded in the country's overarching planning and budgeting cycle. Without clarity on what national authorities have committed to in terms of investments and recurrent funding, it may become risky to budget large-scale long-term funding for generic sector activities rather than continue with project funding.

- The EU and national authorities need to work out clear criteria for more programme or sector-based financing, since while this requires less detail on activities and specific outputs, it requires greater predictability on framework conditions and confidence in stability of the priorities agreed.
- The degree of preparedness varies considerably across the region, so for countries with weaker systems, part of IPA financing could be to assist the country move towards genuine sector programme at some point during the IPA II cycle.

IPA Support has high Transaction Costs. IPA programming is considered lengthy and requires significant capacity by stakeholders. The time between an activity being identified till it is properly programmed, and from there till implementation starts up, can be a question of years. TORs typically need to be approved by the sector Senior Programme Officer, the NIPAC, the national procurement body, and the EU Delegation. There is a lack of flexibility for adjusting to changes in the environment, shifts in programme priorities, staffing changes, technical requirements or funding needs. This constrains project adaptation to the dynamics of judicial reform and the complexities of combating organized crime and corruption. This also means projects are usually not able to pick up on emerging issues identified in Progress Reports.

- The EU and its partners could carry out a "transaction cost" analysis of IPA financing instruments to identify key cost elements (time, skills, management costs) along the delivery chain to see where cost reductions can be made.

7.2.3 Implementation of Activities

Decentralized Management may increase some (short-term?) transaction costs. Decentralised management requires considerable capacity on the side of the national bodies responsible for IPA implementation, something that often is lacking. Local procurement regimes that at the same time must document to an external funding partner may create hurdles that lead to delays. There may be issues of conflict of interest in the funding and monitoring of activities. It also requires that the EC Delegation is flexible and responds quickly, where beneficiaries point to *ex ante* approvals that require as much as 16 steps. “Lessons learned” regarding DIS in FYR Macedonia and Croatia should be identified both to improve processes in these countries but also to share with their neighbours for their planning and preparations.

- While DIS involves certain risks, the EU needs to find ways of ensuring smooth and efficient local implementation, such as relying more on *ex post* verifications, perhaps based on vulnerability studies for identifying likely bottlenecks and leakages points, etc. Intelligent oversight rather than tight controls ought to be a guiding principle.

Public procurement remains a major problem. Public procurement is considered a major source of corruption in most of the states though several have recorded important improvements. The typical challenge is that procurement is controlled by political leaderships both as a source of revenue and political patronage. The incentives to address the problem are negative as far as the involved local actors are concerned.

- Projects need to have a common approach to public procurement that provides incentives for “clean” procurement processes but in particular imposes tough sanctions on identified cases of resource abuse.

CSOs require capacity development. CSOs are engaged in advocacy and watch dog functions regarding judicial reform, and the EU is often helping to strengthen their voice. Yet civil society is still incipient and will require further capacity development as well as political support. Links to other parts of civil society – knowledge/research centres, labour unions, professional associations, faith-based organisations – could be supported. The requirements for own funding – normally 5-20% - for CSOs to apply for EU funding is too demanding.

- Procedures, requirements for CSOs to apply for support need to be simplified, streamlined, and more medium term predictable funding should be made available for advocacy and oversight groups.

Independent media require support. While most Western Balkan states have a Freedom of Information law which may be quite good, there is often no way to enforce it. In a society where formal media – press, radio and TV – are often owned by business or political interests, alternative media are critical. In a number of states, it is claimed that there is little trust in media, so the alternative media themselves need to find ways of reaching their target groups with credible messages. There is a fair amount of investigative reporting taking place and being published on various aspects of social life, and there is an active network of investigative journalism – but it still has a relatively weak platform.

- Independent media with real access to information is a critical pillar for judicial reform and accountability.
- *The EU should carry out a diagnostic study that maps out the current situation and alternatives for the future, based upon which it should develop a medium- to long-term strategy for supporting independent and critical media.*

Quality of international expertise is important. Expectations regarding roles and tasks of experts can differ between beneficiaries and EU Delegations. Where there is a clear understanding, experts sometimes do not meet the requirements due to poor selection. Legal experts coming from common law systems often have difficulties providing good advice in a civil law system. Longer-term resident advisers are considered particularly effective because they have time to adapt to local conditions but also are able to influence the local organisation's mode of working – the “corporate culture”.

- Beneficiary institutions should be the “owners” of technical assistance/twinning expert contracts so that they are the ones making final decisions on contracting, assessing performance and decide whether to rescind a contract or not.

Different parts of the business community have different interests when it comes to combating corruption. Public procurement constitutes a large share of total economic activity. Combined with public permits based on a complex business environment provides the public sector many leverage points for extracting benefits from private companies, which means that those who want to succeed “get ahead by going along”. According to a number of informants, this is a major challenge for the anti-corruption work. The challenge is to identify those businesses that would benefit from a more equal playing field and thus have incentives in seeing corruption and favouritism being addressed. This would include local/small-scale businesses that do not benefit from political patronage; international investors that are not willing to pay bribes; etc.

- The EU needs to partner with other actors in identifying and supporting “champions of change” in a long-term and more consistent manner if the culture of corruption and impunity is going to have any chance of success.

Pushing reforms by reducing transaction costs: Some reform measures can be driven if intended beneficiaries are mobilized, represent a broad-enough coalition and see sufficient benefits from change that they are able and willing to overcome inertia and entrenched interests. One field pointed to is business law, where a focus on reducing legal transaction costs through simplification and standardization, moving to electronic and thus real-time information platforms, enhanced transparency and reduced discretionary decision making authority for granting legal permissions can reduce possibilities for criminal extortion and corruption. Focusing on specific issues where it is possible to identify stakeholder groups that have strong incentives for assuming responsibility for change may generate more pressures for reform than just relying on processes driven from above.

- Mobilizing for change may require casting the net fairly wide when identifying likely partners (business managers, media, watchdog groups, public offices that want change and are willing to publicly front this).
- Things take time: agendas of different actors are not identical, so the process for mobilization needs to be driven by the ability of the actors to reach a common understanding and interest in specific change.
- Reforms that are driven bottom-up may sometimes have greater chances of success because the problems identified may be specific and thus easier to mobilize around. They tend not to have spill-over or more society-wide effects, however, since it is difficult to replicate the specific circumstances of local mobilization;
- Change is more likely to be sustainable if the actors have agreed on principles of transparency and accountability (public officials realise local media will be keeping an eye on them and report on performance), and the agreed criteria for success are SMART.

7.2.4 Monitoring and Reporting Results

Progress Reports need to become operationally useful. The PRs influence much of the EU integration process including assistance and programming but there are long time lags between identified concerns in the PRs till the projects are able to adjust and take on board the issues. To the extent the PRs are meant to provide the EU's general views on important points of the reform agendas, and where the field of RoL is clearly critical, the EU needs to find mechanisms that allows for more rapid responses by projects.

- Annual reviews and possible reforms of project performance should be programmed such that they take place as soon as Progress Reports – in draft or final form – are available. There should be a particular concern within the EU Delegation that key messages of high relevance to particular projects are signalled to project management as early as possible.

ROM reports useful for implementation management. The ROM reports are the only external verification that is carried out on a systematic basis across sectors and projects and over time. It uses a coherent methodology and provides ratings based on a defined set of criteria. But the analysis is based on short visits and thus best at assessing Relevance, Efficiency and Effectiveness. ROM reports should be made public since they contain useful information for a broad range of stakeholders.

- ROM reports should focus on implementation issues, and be made publicly available.

Differentiated monitoring of performance should be considered. Just as Rule of Law progress varies across the region, the intensity of monitoring should also be tailored to the issues that need to be tracked. The starting point should be the targets set in chapters 23 and 24, and adjusted for the particular challenges in that country. A range of dimensions and indicators to be used in such a monitoring system has previously been presented in the Lot 2 report.

- Design a “maximum monitoring system” for chapters 23 and 24 performance tracking based on the Lot 2 indicator study, and tailor this down to a “minimum needs” reporting system for each state, depending on the nature of the particular challenges in each case.

Surprisingly little independent performance tracking. While ROM reports are useful, they are limited in their ability to track performance in the sector – they provide “within the box” assessments of how individual projects are performing. The annual Progress Reports are useful overviews of general trends and weaknesses but lacking in the more rigorous performance review and ratings that the ROM reports provide. Given the importance of the sector for the EU accession process and the structural and practical stumbling blocks that Rule of Law processes are encountering, it may be useful to have more careful results reporting put in place to ensure that the EU is fully aware of systemic problems and real progress.

- The EU should use more in-depth evaluations of complex projects such as organisational development of Rule of Law bodies – identifying attributable results is often difficult but at the same time is critical for ensuring local support for continued reforms.

Strategic follow-up monitoring is useful: Key programs that have ended should have a quick follow-up review 6-12 months later, to assess sustainability and impact. This is both to verify the performance of the organisation/agency once it is functioning only with local resources, but also to check the realism of the ROM reporting as a means for “calibrating” the utility of ROM reporting.

- Within the Delegation's monitoring and evaluation (M&E) programme, resources for post-support reviews of key programs should be included.

7.3 Recommendations for IPA II Programming

This review has generated a long list of findings, conclusions and recommendations. From this, a limited number of what the team considers to be the most strategic recommendations for the upcoming IPA II funding cycle is presented below, again structured according to the four key dimensions of the programming cycle.

Because the seven states are at quite different stages of their rule of law development and accession dialogue with the EU, and the internal dynamics (pace of reforms and progress) are quite different, the actual relevance of the proposals may vary from one state to another. This means the actual operationalisation of a recommendation also would have to be adapted. This means some of the language may appear unnecessarily vague and thus without content in the face of specific needs for programming choices, but given the reality of a region where seven actors are more and more moving at their own pace and according to own priorities, this is largely unavoidable.

7.3.1 Frameworks for EU Support

1. The funding levels (share of IPA funds) required to address the requirements of chapters 23 and 24 should be assessed, where the parties may have to agree a substantial increase. The EU should also ensure that the local Delegation has the capacity to carry both the policy dialogue and the oversight functions to ensure that the programme/projects remain on track.
2. Successful judicial reform requires predictable, stable planning parameters and financing. Programming instruments and cycles need to support this:
 - On the **beneficiary side**, judicial reform programmes should be clear priorities reflected in national policy/budget propositions to parliaments for debate and approval.
 - On the **EU side**, priority programs/projects could have a full IPA II (five to seven-year) time horizon, with clear “stoppage points” for review and adjustment but with financing in principle available for the program period.
3. Defending and developing the independence, integrity and quality of the judiciary should be a top policy and assistance concern. A “vulnerability/risk” analysis of the judiciary could form the basis for an action plan that should be given priority in terms of financing and monitoring.
4. Sustainable judicial reform will require the strengthening of public sector accountability actors – ombudsmen, internal inspectorates, internal audit, supreme audit institution, parliamentary oversight bodies – as critical supplements to legal action (*horizontal accountability in the state*). These would typically not receive RoL financing, but the EU should ensure that national and/or international (EU?) support is put in place.
5. Sustainable judicial reform will require support to non-state actors, for them to become more structured, long-term and strategic (*building vertical accountability systems and capacities*). This may or may not be a RoL component, but should be encouraged.
6. A user-friendly database on projects and disbursements should be publicly available (on the EU Delegation homepage or national authority web-site) to facilitate transparency and insight into resource allocations by DAC sector, beneficiary, year, and other key parameters.

7.3.2 Programming Rule of Law Activities

7. The simplification of IPA II programming to fewer instruments, fewer revisions, more sector programming with longer time-horizons is strongly supported. The programming of IPA II-funds

should be based on genuine participatory programming to ensure broad stakeholder involvement, ownership and agreement. This must include non-executive state actors (judiciary, parliament) and relevant non-state actors.

8. EU should only apply sector programming when conditions are in place: macro-economic framework, planning and budget system allow for predictable financing; sector policies and priorities are visible in the public budget; donor co-ordination and sector capacity is acceptable; performance assessment frameworks are reasonably clear; political will and commitment by national authorities to implement is credible. Where these conditions are not met, the EU should support interested national authorities get them in place as soon as feasible.
9. Continued institutional support to strategic judiciary sector actors can usually be based on a sector approach, should be long-term and include monitorable “corporate culture” dimensions in the results framework.

7.3.3 Implementing Rule of Law Activities

10. The time between prioritization in principle and actual activity design needs to be reduced. Basic design with a results framework that contains Outcomes and priority Outputs should be sufficient for start-up, followed by piloting/ detailed design phase (an approach often used already).
11. Because RoL activities tend to come up against unforeseen blockages, flexibility in reallocation of resources, shifting of timelines etc. should be accepted and quickly processed locally. While Outcomes remain fixed, changes to activities and Outputs should be accommodated.
12. The commitment and appropriateness of long-term experts has proven to be critical to project success and thus should be based on both local ownership and management of the contracts, but also on modern human resources management principles for identification and selection.

7.3.4 Monitoring and Reporting Rule of Law Activities

13. In order to track sector performance and not just project results, RoL programmes should consider establishing sector performance assessment frameworks (**PAF**) with SMART indicators for key dimensions. While this may take some time to get fully in place, it will better enable the partners track actual transformations and Outcome results (see box 7.2).

Box 7.2: Performance Assessment Framework

An overarching PAF requires and supports a sectoral approach to programming and monitoring. While it may be divided into several sub-sectors and track performance at these levels, there should be conceptual and methodological coherence across these components to ensure that focus is on similar phenomena (such as organisational performance, user satisfaction, operational coordination).

The PAF focus on organisational Outputs, resultant Outcomes and over time on Impacts will thus address the weaknesses in the ROM reporting. The PAF should be driven by a number of underlying principles:

- **Rationalisation.** An efficient and straightforward system of collective monitoring by all stakeholders, which reduces the administrative burden at all levels;
- **Harmonisation.** A single framework for monitoring, evaluating and reporting on all Government activities in the rule-of-law area;
- **Co-ordination.** A single forum per sub-sector for stakeholder discussion of progress and assessment of follow-up measures;
- **Stability of resourcing.** The measurement of progress in the context of longer term commitments;

- **Standardised measures of progress.** A single agreed set of sector performance indicators and outcomes;
- **Focus on impact.** Progress measured by improvements in service delivery – i.e. outcomes relating to access, quality and governance;
- **Linking with remedial actions.** The process of the PAF is completed when recommendations arising from M&E activities are fed into strategic and operational planning.

A key output could be an Annual Performance Report, covering all sub-sectors covered by the process (e.g. judicial reforms, anti-corruption, organised crime). The report could be prepared by an assessment team in consultation with the relevant ministries. A mid-term review three years after the launch of the PAF could focus on whether adjustments are needed in policies, targets, indicators, and implementation arrangements.

14. Whatever the structure of the results framework – whether based on individual projects to begin with or larger integrated programmes – an overall Monitoring and Results strategy should be designed that prioritises which projects/activities are to be monitored how often with which instruments (internal administrative reports, external ROM reports, ad hoc in-depth studies), and which variables are to be traced how far out the delivery chain. The design should ensure that key variables across activities are monitored in similar ways (changes to “corporate culture”, client satisfaction, business use of courts to settle disputes etc.).

15. While ROM reports and “SMART” indicators will be part of such a system, the EU should also set aside funds for innovative quality assurance activities, using local knowledge centres, CSOs and others, to track perceptions, experiences of groups that come in touch with the legal system. Use of social media, qualitative surveys etc. can provide cost-efficient, quick and flexible ways of identifying successes and short-comings, and test new approaches and ideas on how to further improve legal sector performance (see box 7.3).

Box 7.3: Tracking Complex Change

Tracing the results of legal reforms along the desired delivery chain can often be complicated and not necessarily easily amenable more traditional monitoring instruments. How groups discriminated by current policies and systems perceive changes to legal structures and practices may often require more in-depth interviewing; acceptability of new approaches to for example small-claims cases may happen much slower or faster than expected, or may easily be misunderstood without the authorities understanding why the expected reaction did not occur. Picking up the unexpected or views that various groups are cautious about proclaiming may be important for decision makers to improve performance. Finding non-controversial and non-obtrusive means for capturing important changes in public views and actions – by particular social group, age, gender, confession, could provide value-added information on how to design, modify and adjust Rule of Law interventions.

One way of promoting this could be for EU Delegations to have own funds put out to tender for innovative approaches for collecting such information. Such competitions could be open to university institutes, think tanks, CSOs, any civic body with believable capacity

What would be useful is for the Delegations across the region to collaborate and inform each other about tasks contracted and results received, for a structured learning process that should be fully public in terms of results dissemination (this itself could be a management task set out to tender, not least of all to ensure appropriate vetting of the quality of the proposals, the methodology being applied and critically reviewing the results being provided).

This may also be a good way of involving non-traditional partners into the larger discourse on judicial reform and the results of the fight against corruption and organised crime. Active involvement by a range of actors would in itself also strengthen the credibility and legitimacy of the results reporting, as well as contribute to wider engagement and public debate – aspects that still remain quite weak in this critical field of societal development.

Annex A: Approach and Methodology Applied

The task was divided into eight phases, as outlined below:

- (i) **Inception** phase;
- (ii) **Mapping** phase;
- (iii) **Policy and results** study;
- (iv) Preparation of the **field work**;
- (v) **Field work**;
- (vi) Drafting of **country reports**;
- (vii) Report **drafting**;
- (viii) Report **finalization** and presentation.

Inception Phase

This phase consisted of (i) participation at a kick-off seminar in Brussels with the EC on 7 December 2011, to introduce the team and clarify issues with the Commission, (ii) agree on communication lines and responsibilities/partnership between DG ELARG and the team to ensure that the team gets access to key documents and actors within the larger EU system, (iii) preparation of team through sharing of basic documentation and subsequent team preparatory workshop in Belgrade January 2012; (iv) drafting of Inception Report for EC for comments.

A key task was the development of the Data Information Worksheet (see at the end of this annex). This was a systematic overview of all issues that the team was to address, structured by theme, and formed the basis for the interviews.

This inception helped the team to develop a common understanding of the task and put together the necessary tool kit to implement it.

Outputs from this phase were largely working documents for and from the team:

- Preparatory document for kick-off seminar with EC, and report from meeting to team,
- Preparatory documents/communications for team workshop in Belgrade, including draft outline of Inception Report
- Draft Inception Report presenting (a) background and objectives of the task, (b) understanding of the task, (c) approach and methodology, (d) structure and data for evaluation, (e) implementation and management of task, (f) annexes providing further details on the expected structure of the final report, information sources, etc. (see 3.1.2 below).

Mapping Phase

Parallel to the Inception Phase, a mapping of the project and document universes was carried out, as these represent two of the key information pillars for the task.

The project inventory was to identify the relevant projects that were approved during the period 2001-2010. A first inventory of projects covering the complete period was put together by using data available on the various EU web-sites. Particularly for the CARDS period, however, it was found that the listing was so inaccurate, and the Delegations had problems verifying old records, so the team instead went with the formal project listing of IPA projects for the period 2007-2011 (provided as Annex D in the Inception Report). From this list, in dialogue with the various Delegations, the most relevant projects were selected for review.

The document list ended up containing strategy and policy papers as well as the results documentation that was possible to find.

As part of this process, a visit was carried out to Brussels to interview EC DG ELARG and other EC staff to verify that the approach, document listing and project inventory of the team are seen as appropriate and provide solid foundations for this task.

Output from this phase was:

- Overview of policy and strategy documents from the EU regarding support for the Rule of Law, with particular focus on documents on the Western Balkans.
- Overview of relevant projects/programmes carried out in Western Balkans 2001-2010.
- Inventory of results documentation on activities carried out in Western Balkans 2001-2010.

Policy and Results Study

Based on the mapping exercise, a first review of the available documents was done, using the Document Review part of the Data Information Worksheet. This was both to establish a first understanding of the current and expected policy environment for programming future Rule of Law assistance, but also to map out what the documented results of Rule of Law interventions across the region are. The results documentation, this will be distributed according to the team's agreement on geographic and functional responsibilities.

A first set of telephone interviews was carried out with Council of Europe and other international and non-governmental organisations.

Output from this phase was:

- First analysis of the policy environment for Rule of Law work in Western Balkans,
- First activity overview by country and Rule of Law dimension including first analysis of results achieved,
- First set of interviews carried out, testing Data Information Worksheet.

Field Work Preparations

Based on the document review and first interviews with stakeholders at EU head office, the field work was organised based on the general understanding of the task complexity in each of the seven states (number of activities, number of dimensions to be covered, number and range of stakeholders to interview, actual issues/shortcomings that need to be looked into), and the distribution of geographic and functional responsibilities across team members,

In collaboration with the local EU Delegations, the team prepared a list of local informants to interview. From the Data Information Worksheet a set of Conversation Guides was prepared. These were one-page overviews of the key questions the team would like to raise with particular informant groups, and thus focused on a few of the topics from the larger Data Information Worksheet – the issues that a particular informant group could be expected to know more about. Normally these Conversation Guides were sent to the informants beforehand, to allow them to prepare for the conversation.

Outputs from this phase were:

- A work-plan for the field work allocating team members across countries, work days and tasks/areas of responsibilities,
- A list of the informants the team would like to speak with,
- A Data Information Worksheet,
- The logistics for carrying out the field work in place (air-tickets, hotels, interview schedules).

Field Work

The team carried out the field work in May-June. Two persons from the evaluation team visited each country, to ensure that there were “two pairs of eyes and ears” on the ground. **One** person was responsible for preparing the country annex. The team then met for a joint workshop in Belgrade on the weekend of 16-17 June, to compare notes from the field work, discuss first findings and conclusions, and agree on next steps in terms of drafting of country annexes and the main report.

Output from this phase was:

- Summary notes from the interviews structured in accordance with the Data Information Worksheet,
- Debriefing note (bullet points) for end-of-mission meeting, summarising key findings and preliminary conclusions.

Drafting Country Annexes

Country annex reports summarising the findings and conclusions from the field visits were prepared and sent to key stakeholders for comments in the various countries. These then make up the annexes to the final report.

The main purpose of the country annexes is to document what the team has found at country level to allow local stakeholders in particular to comment and correct, since it is the country studies that form the foundation for the main report.

The country annexes are fairly short. But since the evaluation originally foreseen was not carried out, the team had to record whatever results have been documented as the empirical basis for operational recommendations. The structure of each country annex is the same and follows that of the main report to allow for easy aggregation of results across countries.

Output from this phase was:

- Country annexes from each of the states visited, sent around for comments.

Report Drafting and Finalisation

Once the document review and interviews were finalized and comments received to the country annexes, the main report was prepared and sent around for comments.

As part of this finalisation process, team members will be available for whatever debriefings, workshops and discussion sessions that the DG ELARG feels are required to ensure complete and useful dissemination and discussion of the findings, conclusions and recommendations of the team.

Output from this phase will be:

- Complete final report with annexes
- Dissemination/debriefing materials, as required

Sources of Information

The evaluation was largely based on two information sources:

- **Documents** on EU policies, EU funded Rule of Law activities – projects and programmes – and written documentation regarding results achieved (see Annex B for complete list).
- **Interviews** with informants in the beneficiary countries and at EU head office (see Annex C for complete list of informants).

The team interviewed informants from essentially three groups of actors:

National stakeholders in beneficiary states:

Public Officials

- Decision makers/senior staff in ministries (Justice, Home Affairs, EU Affairs)
- Parliamentary Committees, as appropriate and where feasible
- National IPA Coordinators, Central Financing and Contracting Agency (CFCA)

Officials/persons in the Legal Sector

- Judicial education bodies, legal professional bodies (law faculties, training centres)
- Judges, Magistrates, Court Clerks - Courts (Supreme, High, District, Commercial)
- Prosecution Institutions; Anti-corruption bodies; Police
- Mediation bodies, Ombudsmen offices

Funding Partners in Rule of Law sector

- Multilateral funding institutions, where relevant (World Bank, EBRD, IFC)
- Bilateral donors, where relevant
- UN agencies, where relevant

Other National Stakeholders outside Public Sector

- National business community (employers' associations, chambers of commerce etc.)
- National civil society organizations engaged in the Rule of Law work (advocacy, watch-dog bodies in particular – CSOs that have received EU Rule of Law funding),
- International NGOs engaged in Rule of Law activities (funding agencies, international watch dog bodies etc.).
- Media, journalists engaged in Rule of Law reporting

EU/EC Stakeholders:

- Relevant members of the European Parliament;
- DG ELARG staff (country desk officers, rule of law chapter staff, managers etc.);
- EU Delegations in beneficiary countries;
- Other Commission DGs and services (DG JUST, OLAF, DG HOME).

Other International Stakeholders:

- International staff of multilateral agencies engaged in the Western Balkans
- Staff of Council of Europe, OSCE and others engaged in the Western Balkans.

Final Observation

The team tried to reach out to a wide audience during the field missions – private sector, civil society, law faculties – to canvass a broader opinion base regarding *what might work, and why*. The focus was all the time the same, however: to identify *useful, implementable improvements* to how the EU programs its financial assistance to the field of Rule of Law.

Data Information Work Sheet

The Data Information Worksheet was the team's main data collection and registration instrument. It is in two parts. The first lays out issues to be answered through the Document Review. The other is the team's Conversation Guide.

The Document Review is largely in order to address the three evaluative questions. The issues that the team members are asked to address when reading the documents are thus related to these.

*The Conversation Guide is to identify results achieved but first and foremost identify proposals for the future, where the attention is all the time **how the EU can better program its financial assistance to Rule of Law activities.***

1: Document Review

The team will review EU policy/strategy documents as well as more specific programme/project documents (see Annex E). Focus is on documents that identify results produced and the reasons for these, as a background to producing recommendations for future programming.

Intervention Logic / Relevance

To what extent has financial assistance addressed the priorities outlined in key enlargement strategic and policy documents in the areas of rule of law, judicial reform, fight against organised crime and corruption?

- Does programme and project logic reflect the policy goals as expressed in key enlargement strategic and policy documents?
- Are specific issues identified in programme or project documents in line with those highlighted in key enlargement strategic and policy documents?
- Do programmes and projects address the beneficiaries identified in key enlargement strategic and policy documents?
- Were key stakeholders (national authorities, EU Delegations, civil society, beneficiaries, donors) involved in formulation of programmes and projects (may be difficult to assess from documents but important to try to find)?

Efficiency

How efficient is the selection of interventions to address priorities in the above areas?

- Has EU financial assistance in the Western Balkans contributed towards achieving the objectives, as identified in the intervention logic?
- Have the modalities of implementation (instruments and modes of delivery) been efficient in achieving objectives?
- Were systems for monitoring of inputs, processes and results in place and provided accurate and useful data?
- Were indicators of efficiency suitable and systematically monitored and recorded?

Impact - Sustainability

What are the key factors on the impact of assistance in the above areas?

- Has policy commitment in the Western Balkans states been secured in order to ensure the sustainability of EU strategies, policies and financial assistance?
- Is there coherence/alignment between EU strategies and policies and national strategies of beneficiary countries? Were programmes and projects conceived within strategy frameworks, based on clearly defined needs?
- Have critical elements for adequate public and administrative capacity been in place (stable institutions, appropriate public investment policies, adequate inter-ministerial and central-regional collaboration)?
- Were relevant civil society bodies involved in the project and their roles defined in relation to results?

What are the key factors on sustainability of assistance in the above areas?

- Have the changes observed led to the adoption of appropriate strategies, policies, legislation and documented implementing procedures? Have they involved the establishment of institutions and the staffing of new positions and the training of staff?

- Were the changes underpinned with national budget plans and expenditure frameworks?
- Have stakeholders with strategy, policy or management responsibility demonstrated ownership for the implementation of programme results?

2: Conversation Guide

When interviewing informants in the Western Balkan states, team members often spoke with persons who have a particular sub-dimension focus – judicial reform or fight against organised crime, for example. Furthermore, some informants will know a lot about the design of programmes/ projects while others have a better understanding of implementation and results. Team members will also have to adjust the questions to the different country circumstances, so capturing context and relating answers to this will be key when recording and interpreting the answers provided.

Experience is that most conversations lasted 60-90 minutes. This limited the number of issues that could be raised. In general somewhat more than half the time was spent inquiring about results achieved, while the remainder was for exploring options for the future.

Results Achieved and Programming for the Future

General – EU support for Rule of Law efforts

- Which steps/projects to improve Rule of Law have achieved the best results (New laws? Better judges? Independent courts? Independent investigative press, active citizens' groups, private sector lobbies? Parliamentary investigations, police investigations? International support, standards, experiences?). What accounts for the results?
- What are the key results that have been achieved due to EU support to Rule of Law efforts? What have been key factors of success, and reasons for non-achievements?
 - **Design:** Have EU-funded activities addressed the right issues and in the right manner (“are we doing the right things, and doing the things right?”)? Has local context and history been fully taken into consideration (do we understand the incentives and constraints the various actors face)? Have key stakeholders been involved in the design? Have the activities been planned in line with national plans, programs and the activities of other actors (donors, UN agencies, local bodies)?
 - **Implementation:** Have the right actors been involved on the national side – was there strong local ownership/leadership to the project/program? Were the external partners committed/ the right ones? What were the strengths and weaknesses of the local ↔ international partnership?
- What are the key challenges that the EU should focus on in the future (reform legislation, build reform-friendly alliances, strengthen independence of the courts)? Under what circumstances will EU support be most likely to succeed? Do we know anything about sequencing of steps to improve the likelihood of success?
- **Summing Up:** What should the EU do differently to achieve better results in the future?

Judicial Reform – Results and Future Programming

- Which structural/institutional/organisational changes in the judiciary has the EU supported:
 - Has EU support helped improve separation of powers, and the independence of the judiciary in particular? How?

- Does the country have an acceptable (objective, impartial) appointment process for judges and prosecutors? Has EU support improved this situation? How?
- Has EU support improved the judiciary's transparency and accountability? Has it helped to improve the standing of judges and prosecutors?
- Has EU support contributed to a fairer judiciary system? Has it helped to increase the judiciary's respect for individual rights, particularly the rights of vulnerable groups?
- Has EU support contributed to improve access to justice? If so, how?
- Has EU support improved law faculties at universities, the training of judges and prosecutors? Has this contributed to the judiciary's quality and efficiency?
- Have EU contributions to the judiciary's funding had an impact on its independence, quality and efficiency? If so, how (e.g. improvement of facilities and IT equipment, education of judges and personnel, increase in the number of staff, etc.).
- Has the EU targeted the execution of court decisions? Has EU support helped to increase the percentage of successfully enforced judgements?
- What are the key judicial reforms that the EU should support – structural, organisational, skills, legal (commercial, family, criminal law)?
- Which other societal changes should the EU be concerned about if it wants judicial reforms to succeed (general reforms to public administration? General economic trends? Other things?)?

Fight against Corruption – Results and Future Programming

- The fight against corruption can focus on prevention or prosecution/repression. What has so far been the most successful approach? Was EU support important or has it failed to achieve its objectives? What were factors of success/disappointment?
- Which structural/institutional/organisational changes has the EU tried to support: Stronger cross-border collaboration? Changes to public finance management? Public administration reform? Focus on certain corruption prone sectors? Focus on certain activities such as public procurement, contracting, hiring? What has worked, and why?
- Has EU support contributed to improved transparency/reduction in corrupt practices? Has EU support strengthened actors who combat corruption? Has EU support improved accountability of public decision makers? If so, how?
- What are the actions that the EU should support to reduce corruption: structural, organisational, skills, legal, balancing prevention, repression? Why are these the most important ones?

Fight against Organised Crime – Results and Future Programming

- Which structural/institutional/organisational changes in the fight against organised crime do you believe are due to EU support? What accounts for these results?
 - **Legislation:** Did EU funding contribute to new or improved anti-organised crime (OC) legislation? Has this legislation been implemented? Has it had any effects?
 - **Regional cooperation:** Did EU assistance enhance regional enforcement cooperation? In which areas, and how can we document results?

- **Statistics:** Did EU aid support new or improved ways of measuring levels and results of OC? Did it lead to improved and greater availability/quality of criminal statistics?
- **Drugs/human trafficking:** Has EU support increased the number of enforcement operations/arrests/seizures/ sentenced individuals?
- **Money laundering:** Has EU funding provided new/better regulations/procedures on anti-money laundering? Have the changes been implemented? Has it had any effects?
- **Confiscation of crime-related assets:** Has EU funding provided new/better regulations/procedures for the confiscation of crime-related assets? Have these changes been implemented? Has it had any effects (how is it being measured)?
- What are the key steps that the EU should support in order to combat organised crime (legislation - institutional development – regional cooperation – enforcement capacity – financial crime - criminal statistics?) Why are these the most important ones?

Annex B: Documents Consulted

Note: Documents are listed in reverse chronological order, then by publishing entity:

- **EC**: European Commission
- **CoE**: Council of Europe
- **OSCE**: Organisation for Security and Cooperation in Europe

The Results Oriented Monitoring (ROM) Reports used are not listed

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Annex C: List of Informants

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Mr. Edmond Rizaj, Director, Department for fighting Narcotics Trafficking

Mr. Arjan Muça, Director, Department for Witness Protection

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Ms. Vjollca Mecaj, Executive Director, *Albanian Helsinki Committee*

Ms. Andi Dobrush, *OSI Albania SOROS*

Mr. Remzi Lani, Executive Director, *Albanian Media Institute*

Mr. Arben Lila, *CoE/EU Project Against Corruption in Albania – PACA*

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Ms. Sanja Bazina, Junior Associate, Programming Department

State Ministry of Justice, BiH

Mr. Niko Grubešić, Assistant Minister

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Mr. Nikola Jokić, Aid Coordination Associate, Sector for Strategic Planning, Aid Coordination and European Integration

Mr. Gerald Mayerman, Adviser, Chief of party, USAID JSDP II project

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Mr. Vjekoslav Vuković, Assistant Minister

High Judicial and Prosecutorial Council (HJPC)

Ms. Amra Jašarović, Deputy Director, HJPC Secretariat

Mr. Emir Srna, Senior Adviser

Prosecutor's Office, BiH

Mr. Erik N. Larson, International Prosecutor, Special Department for War Crimes

Mr. Drew Engel, Special Adviser, Special Department for Organised Crime

Constitutional Court, BiH

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Anti-Corruption Agency, BiH

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Mr. Endy Seperić, Strategic Planning

Ministry of the Interior, RS

Ms. Sanja Dragicević, Head of EU Integration

Judicial and Prosecutorial Training Centre, FBiH

Mr. Trumić, Director

Judicial and Prosecutorial Training Centre, RS

Mr. Vanja Pavlović, Head

Sarajevo Municipal Court, FBiH

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Republic Prosecutorial Office for Organised Crime

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Annex D: Country Report, Albania

1. Country Strategy and Programme

The Republic of Albania signed the Stabilization and Association Agreement (SAA) in June 2006 which entered into force in April 2009. In 2008 a new European Partnership was adopted by the Council and the country has continued to make progress in addressing the set priorities (MIPD 2011-13, pg.7).

In 2009 Albania applied for a membership in the European Union. Following a request by the Council, the Commission submitted its Opinion on Albania's application in November 2010 addressing the priorities and challenges in the accession process. In December 2010, visa liberalization entered into force. In October 2012 the Commission recommended Albania to be granted with the EU candidate status, subject to completion of certain measures in the judiciary, public administration reform and parliamentary rules of procedures.

Institutionally, the Ministry of European Integration is in charged for monitoring and coordinating EU assistance. There is also a Department of Strategy and Donor Coordination having the Strategies and Aid Coordination Units, responsible for assisting in donor coordination including IPA. According to MIPD the Integrated Planning System (IPS) has links on key sectors on integration and the country seems to be well advanced in planning and development of various policy sectors (MIPD 2011-2013 pg.6)

The Minister of EU integration is the National IPA Coordinator (NIPAC) for IPA programming.

The country has adopted a number of documents relevant for the accession such as: Albanian National Strategy for Development and Integration 2007-2013; National Plan for the implementation of the SAA 2010-2014; NSDI 2007-2013 which represents the priorities in 38 Strategies out of which 20 sectoral and 18 sub-sectoral.

Around 75% of the approved government strategies are considered to be of adequate or good quality.¹⁴ Sector strategies are in place, however the exception is that there is no sector strategy in the area of Justice (MIPD 2011-2013 pg.9). From the 2007-2009 IPA Programs, 60% of the overall project objectives and 58% of purposes had a positive assessment.¹⁵

MIPD 2011-2013 is based on the needs identified by the EU Partnership, the Opinion on Albania as part of the Enlargement Package and country strategies.

1.1 Rule of Law Situation

Independent and efficient judiciary, fight against corruption and organized crime are key challenges to the rule of law. In the accession process of the Western Balkan countries strengthening the rule

¹⁴ Strategic/Interim Evaluation of EU IPA Pre-Accession Assistance to Albania, Evaluation Report, Project no.2010 /231987-version II, p.vi

¹⁵ Strategic/Interim Evaluation of EU IPA Pre-Accession Assistance to Albania, Evaluation Report, Project no.2010 /231987-version II, p. iii.

of law is “identified as continuing major challenge and a crucial condition”.¹⁶ One of the key areas of the financial assistance to Western Balkans countries has been the area of the rule of law. IPA priorities are defined by the Stabilisation and Association process and the European partnership.

Justice and Home Affairs is considered as one of the most important areas for improvement where progress is expected from the Republic of Albania.

The first priority for IPA support according to the MIPD 2011-2013 (pg.4) for Albania is strengthening rule of law, the independence, efficiency and accountability of judicial institutions and increase the fight against organised crime.

Similarly, according to the MIPD the main political problems in Albania among others are the following: strengthening the rule of law, reforming the judiciary and to continue with efforts to fight corruption and organized crime (MIPD 2011-2013 pg.5). Therefore, MIPD 2011-2013 notes the sector of Justice and Home Affairs among the priority sectors for programming between 2011-2013 (pg. 4, 5, 11).

In more specific terms, the following sections will address EC Assistance in the rule of law with specific focus in judicial reform, organized crime and fight against corruption.

1.2 Country Programming and Country Programmes 2007-2011

From 2000-2006 technical assistance was provided through the CARDS program and from 2007 it was provided under the patronage of the Instrument for Pre-Accession Assistance (IPA).

Between 2001 and 2006 Albania benefited around EUR 330 million of CARDS assistance which targeted four broad reform priorities: justice and home affairs (about 40% of the funding), administrative capacity building (about 20%), economic and social development (about 35%), and democratic stabilization (about 5%).

IPA now represents the essential instrument for providing financial assistance by the Commission to Albania.

The following table represents the allocation of IPA funds in between 2007-2013:

Table D.1: IPA Allocations 2007-2013 (€ million)

Country	2007	2008	2009	2010	2011	2012	2013
Albania	61.0	70.7	81.2	94.1	94.4	94.5	98.1

According to the MIFF 2011-2013 in Justice and Home Affairs, to Albania for the period for 2007-2010 there were € 56.52 million, and for the period 2011-2013 € 38.66 million allocated which amounts € 95.18 for the period 2007-2013 in the sector of Justice and Home Affairs.

In more specific terms, from the 2007-09 programming period there was a continuous support for the rule of law sector making up in total 14% of the programming funds.¹⁷

¹⁶ Communication from the Commission to the European Parliament and the Council, Enlargement Strategy and Main Challenges 2011-2012, Brussels 12.10.2011, COM (2011) 666 final, p.4,23

The following table presented by the Albania IPA Strategic Interim Evaluation (pg. 15) shows the allocation of IPA Funds for 2007-2009:

	Sector	IPA 2007	%	IPA 2008	%	IPA 2009	%
Axis 1: Political Criteria							
1	Rule of Law and Judicial Reform	15,518,790	82%	11,500,000	53%	9,470,000	27%
2	Public Administration*	3,500,000	18%	7,955,470	37%	22,322,000	64%
3	Fight against Corruption			2,130,000	10%		
4	Fight against Organised Crime					1,500,000	4%

Fight against Organised Crime and Corruption have received far fewer funds for this period raising the possibility that MIFF allocations to axis 1 may not be adequate to meet the needs.

MIPD 2011-2013 adopts a sectoral approach.

To enhance ownership, pre-accession assistance will increasingly use a more sector-based logic in its planning. In order to further increase IPA assistance impact, the Commission has concentrated on targeted sectors as a means to facilitate cooperation between donors and beneficiaries, eliminating duplication of efforts and leading to greater efficiency, effectiveness and impact (MIPD 2011-13, pg.4).

Based on this enhancing national absorption capacity of the beneficiary for a sector based approach is a key priority. MIPD 2011-2013 also notes that assistance will primarily focus on the following sectors: justice and home affairs, public administration reform, transport, environment and climate change.

1.3 Findings and Conclusions

On the **overall programming**:

- The Country has set up the institutional framework and the main policy documents in line with the EU Integration priorities.
- With regard to intervention logic of assistance the conclusion is that the objectives are not clearly prioritized in the programming document and not supported by measurable impact indicators.
- Overall, there is room for allocation of more assistance on matters of substance in rule of law assistance and the sectors under evaluation.
- While MIPDs provide a three-year funding horizon, they lack consistent established indicators in RoL and the sectors addressed here.
- The Sectoral approach is positive but it can only work if sufficient absorption capacity by the beneficiaries is ensured.

¹⁷ Strategic/Interim Evaluation of EU IPA Pre-Accession Assistance to Albania, p. iv

- Twinning projects are better accepted by national institutions as they provide for longer presence of international expertise and a better assessment of needs.
- Sequencing of projects or longer term projects is especially important for rule of law reform.
- Programming in a contentious field like judicial reform should be based on an inclusive programming process to ensure the broadest ownership and agreement possible, and this requires time.
- National parameters for such longer-term programming should be in place: public financing, legal/regulatory frameworks, and institutional structure. To the extent any of these are missing, they should be among the top issues on the reform agenda.
- IPA assistance should also be able to provide for more immediate or short term assistance to address imminent reform needs.

2. Judicial Reform

A well-functioning judiciary which is impartial and effective represents a key criterion for EU integration. The Ministry of Justice is responsible for the EU integration in the sector of the Judicial System and reform including independence, transparency and accountability. Judicial reform is considered a key priority and the 2012 Progress Report notes moderate progress (p.10).

The main sector objective is to strengthen the independence, transparency and the efficiency of the judiciary. In specific: increased independence between powers, courts to learn from European best practices, Judges and Prosecutors status and professionalism to be strengthened, improve the infrastructure in the judicial sector, increase execution of Court decisions (MIPD 2011-2013 pg.16). The adoption of the Law on Administrative Courts and of the Law on the National Judicial Conference and the Law on the Profession of Lawyer represent positive steps forward. Furthermore, one of the greatest remarks of the 2009 and 2010 Progress Reports was fulfilled with the adoption of the Judicial Reform Strategy and Action Plan, in July 2011 which provides for a good basis for the implementation of reforms in the judiciary. The implementation of the Judicial Reform Strategy and Action Plan will require adequate resources and inter-institutional cooperation (Albania 2011 Progress Report, pg.10).

The 2012 Report also notes some progress in regards to independence and impartiality though the reform of the Laws on the High Court and the Constitutional Court have not been adopted.

The Computerised System of Management and random allocation of cases should be enhanced and cover all courts. The Courts have separate budgets but the budgetary appropriations remain insufficient so there is lack of human and financial resources. Investigation of corruption cases in the judiciary was prevented by the full immunity of judges, which represented a major problem. However, good progress in fighting corruption in the judiciary was made with the constitutional reforms limiting the immunity of judges (Progress Report 2012 pg.12). The adopted legislation now is in place and should be implemented to address allegations of corruption in the judiciary.

It is a continuous remark that enforcement of court decisions should be enhanced as it remains weak.

There has been limited progress regarding access to justice. The legal aid commission was set up, by-laws have been adopted, but the law remains to be fully implemented. Some limited progress can be reported as regards implementation of anti-discrimination policies with the Office of the Commissioner for Protection from Discrimination organizing a number of awareness-raising activities and training events. So while there are efforts to develop legislation in judicial reform, the most important challenge, though, is the implementation of legislation.

In the judiciary, the issue of overlap of inspection powers between the inspectorates of the HCJ and of the Ministry of Justice (MoJ) is still unresolved and without amendment of the law on the HCJ (requires a three-fifths majority vote in Parliament) the MoJ and HCJ have adopted a Memorandum of Understanding.

The most important challenge for Albania is the implementation of its legislation. The MIPD 2011-2013 has identified as priorities the implementation of the reform strategy for the judiciary, its independence, efficiency and accountability as a priority for financial assistance (MIPD 2011-2013 pg.10).

2.1 Assistance Provided

The judiciary has received significant assistance throughout the years from both CARDS and IPA. At the initial stage of CARDS assistance, the judiciary was moving from an emergency situation into a consolidation phase. A large amount of support has been provided for infrastructure (court buildings and pre-detention centres) in the judiciary.¹⁸

Some of the early assistance included for example, CARDS program EURALIUS 1 implemented from June 2005-November 2007 assisting justice reforms in particular improving management capacities of the Judiciary, improving the office for administration and Judicial budget, enforcement of rulings. As well as EURALIUS 2 from November 2007 to May 2010 in addition is focused to criminal justice and immovable property rights issues. IPA 2009 continues this assistance with a project "Assistance to the Justice System".

The following table presents a list of project ranging from IPA 2007 to 2011 focusing on the judiciary:

¹⁸ Ad Hoc Evaluation of CARDS Programmes in Albania pg.2

Table D.2: IPA Projects, Judicial Reform

IPA	Project title	EC €	Description
2009	Assistance to Justice Reform – EURALIUS (Justice Reform)	3,300,000	To support the Ministry of Justice and institutions of the judiciary in consolidating the legislative framework and institutional capacity, and reforming the criminal justice system.
2009	Witness protection	555,000	Support Criminal Justice reform
2009	Supply of IT equipment Witness Protection	200,000	IT communication equipment
2009	Supply of vehicles for witness protection	265,971	Provision of special vehicles to improve operational efficiency and security of staff and protected persons through the utilization of properly equipped motor vehicles
2010	Criminal Justice	3,000,000	Modernization of the Justice system -case management system for the General Prosecutor Office
2010	Support to Penitentiary Infrastructure and improvement of training and accommodation capacities in the Police Education Centre	18,200,000	To enhance the situation in the detention facilities in the country and the Penitentiary system in general, through decreasing the overcrowding of prison facilities (new prison built in Fieri) and improving prisoner's living conditions (improved respect for human rights and rights of prisoners).
2011	Construction of a new pre-detention centre and prison in Shkodra	18,500,000	One of the specific objectives in this sector according to the MIPD is "to improve the infrastructure in the judicial sector, i.e. the courts, prison and pre-detention systems."

2.2 Results Achieved

The assistance as can be seen throughout the years has resulted in substantial efforts to improve the: legislative and institutional framework and much more the infrastructure of court building and detention centres.

Some of the assistance from projects include: support to the training of Court Administrators to Albania and Court Administrators organized and trained; permanent training and sustainable training structures established for court administrators; Computerized Case Management System through another CARDS project; Building prison in Korca, Pre-trial Detention Centre in Dures and Juvenile Centre Kavaja, IPA 2011 also foresees the construction of the pre-detention centre in Prizren and Shkodra. Also assistance was provided through Twinning Programs with High Council of Justice or the General Prosecutors Office in money laundering and witness protection; supporting the School of Magistrates; EURALIUS 2; consolidation of the Justice system and the computerisation of the prosecution service (MIPD 2011-2013, pg.15).

This has resulted in significant shift in many areas, most notably in the infrastructure and also in the legal and institutional framework. The development of the needed legislative and policy framework resulted with a major move forward with the adoption of the Judicial Reform Strategy and Action Plan, in July 2011 which represents a significant step forward. Second, the limitation of the immunity of judges represents an important step forward. The immunity of judges represented a significant

difficulty to fight corruption and also influenced the high levels of corruption (perception/real) noted in the Progress Reports as well as in the public opinion. Also, among others the following laws were adopted: the Law on Mediation, the Law on Administrative Court, amendments to Criminal Code (adopted and some pending), the Law on Judicial administration, Law on judicial power, Law on HCJ, Law on High Court, Law on legal aid, Law on Constitutional Court, Law on enforcement service, Law on National Judicial Conference, International Judicial Cooperation in Criminal Matters, Law on School of Magistrates, Law on private Judicial Enforcement, Law on Organisation and Functioning of Prosecutor's Office, Law on the Profession of Lawyers, Law on Organisation and Functioning of the Ministry of Justice, Law on Serious Crimes Court, Law on the Organization of the Judicial Power of the Republic of Albania, Law on mutual legal assistance, Law on Witness Protection

A number of institutions received support: High Council of Justice (HCI), School of Magistrates (SoM), Office for Administration of Judicial Budget (OAJB), National Judiciary Conference.

There were improvements also in regards to efficiency, independence, impartiality and transparency though much more could have been achieved and remains to be achieved.

In regards to the assistance provided, including regional projects related to the judiciary, the following available ROM reporting given below provide the following results:

Table D.3: ROM Report ratings of projects, Judicial Reform

Project Title	Year of Report	Sub-Field	Relevance & Design	Efficiency	Effectiveness	Impact	Sustainability
Development of monitoring instruments for judicial and law enforcement institutions in the Western Balkans	2010	JudReform	B	B	B	B	C
Enhancing the Judicial System in Commercial Matters	2009	JudReform	B	A	B	B	B
EURALIUS II	2010	JudRef	B	B	B	B	C
Establishment of an independent, reliable and functional judiciary and the enhancing of the judicial cooperation in We Balkans	2007	JudReform	B	B	C	B	B
EURALIUS	(Feb) 2007	JudReform	B	B	B	B	B
EURALIUS	2006	JudReform	B	C	B	B	B
EURALIUS	(Oct) 2007	JudReform	B	B	C	B	C
EURALIUS	2005	JudReform	B	C	B	B	C

IV EC-CoE support to School of Magistrates, organization and training of legal professions and promotion of human rights.	(Mar) 2005	JudRef orm	B	B	B	B	C
IV EC-CoE support to School of Magistrates, organization and training of legal professions and promotion of human rights.	(Oct) 2005	JudRef orm	C	B	B	B	C
Support to High Council of Justice and its inspectorate.	2007	JudRef orm	B	B	B	C	C
Consolidation of the Albanian Justice System	2011	JudRef orm	B	B	C	B	C
Enhancing the Judicial System in Commercial Matters	2011	JudRef orm	B	A	B	B	B
Establishment of a preventive and restorative juvenile justice system.	2007	JudRef orm	B	C	B	C	C
Development of border management strategy, leadership, management and training of border police	2005	JudRef orm	B	B	B	B	B
Support to the General Prosecutor Office to Undertake Inspections and Evaluations of Prosecutors	2009	JudRef orm	B	B	B	B	C
Support to the General Prosecutor Office to Undertake Inspections and Evaluations of Prosecutors	2010	JudRef orm	B	B	B	B	B
Support to the High Council of Justice and its Inspectorate	2008	JudRef orm	B	B	C	B	B
Support to the Prosecutors' Network	2008	Jud Reform	C	C	B	B	B
Support to the Prosecutors' Network	2009	JudRef orm	C	C	C	C	C
Support to the Prosecutors' Network	2010	JudRef orm	B	B	B	B	B
V EC-COE: Support to the training of Court administrators in Albania	2008	JudRef orm	B	B	B	B	C

As it is quite easily noticeable from the ROM Reports of these projects in the judiciary, the majority of them have a great variety of grades achieved within and between projects ranging from: A, B and C in the different categories: project design, efficiency, effectiveness, impact and sustainability. If analysed, the following allocation shows the grading with the categories and their %:

Table D.4: Distribution of ROM Report Ratings, Judicial Reform

	A	B	C
Relevance and Design	/	19 (86.36 %)	3 (13.63 %)
Efficiency	2 (9.09 %)	15 (68.18 %)	5 (22.72 %)
Effectiveness	/	17 (77.27 %)	5 (22.72 %)
Impact	/	19 (86.36 %)	3 (13.63 %)
Sustainability	/	10 (45.45 %)	12 (54.54 %)
Total	2 (1.81 %)	80 (72.72 %)	28 (25.045 %)

From the table it is obvious that the best two grades A (achieved only in the category of efficiency) represented only 1.81 % of the total, the 80 B's represent the majority or 72.72 % of the total and the 28 C's represent around a quarter or 25.04 % of the total.

The weakest category with the majority C's is sustainability and definitely should be addressed.

2.3 Findings and Conclusions

In regards to the judiciary, there is some progress noted throughout the sector. The legislative framework is mainly in place. The major difficulty seems to be the issue of corruption in the judiciary which is noted by the Progress Reports and the interviews. The limitation of the immunity of judges was the next major imminent reform needed for Albania and it has its impact not only in the judiciary but also in fighting organized crime and corruption. Furthermore, the salaries and working conditions in the judiciary should be improved in order to make the sector less vulnerable to corruption. The Memorandum of Understanding between the HCJ and MoJ remains a contentious issue thus hampering further development of professionalism.

Having said this, in particular for the judiciary should be taken into consideration:

- The recent limitation of the immunity of judges is a significant step in fighting corruption in the judiciary as well as organized crime, its implementation remains to be seen.
- A process of vetting of judges and prosecutors can make a long way in improving the public perception of corruption in the judiciary.
- The working conditions and the salaries in the judiciary should be improved.
- Independence of the judiciary (including especially the prosecution) should be further strengthened by empowering more mechanisms for the separation of powers. Sufficient budgetary independence can further increase the independence.

- At times, the Judiciary should be enabled to separately proceed with programming and not through the coordination of the Ministry of Justice as it may be the case that potential for conflict of interest may exist (for example in assistance further strengthening the independence of the judiciary).
- Long term projects or sequencing is required in order to address better the needed reforms in the judiciary which also require mentality change
- Backlog of cases should be further addressed and assessed as a difficulty that still hampers the efficiency of the judiciary.
- The weakest point according to the ROM Reports in Assistance is sustainability and it should be addressed. Impact and sustainability should be measured in a comprehensive and systematic manner.
- The judiciary should be able to tackle high profile cases of corruption as data in the issue remains low.
- Having focused on infrastructure in a large portion, EC Assistance can clearly focus more on substantive issues and direct assistance in that direction in the mid and long term.
- Enforcement of court decisions should be addressed as it hampers the credibility of the judiciary in the public.

3. Fight Against Organised Crime

The 2011 and 2012 Progress Reports note that some progress can be reported in police cooperation and fight against organized crime. Overall, the 2012 Progress Report notes some progress particularly in border management, international cooperation and fight against organized crime (pg.57). The legal framework or the so-called "anti-mafia" law is in place and needs to be implemented. The MEMEX criminal intelligence system has improved data exchange within the Albanian State Police.

The MIPD 2011-2013 has a particular focus in strengthening the fight against organized crime through proactive investigations and threat assessments as well as regional and EU cooperation including better coordination between the Law Enforcement Agencies.

Albania has adopted a number of documents including the National Strategy for fight against Organised Crime, Trafficking and Terrorism, the National Strategy for fight against Trafficking of Human Beings and Children, Law against Money Laundry, National Drug Strategy. There is a need for much greater institutional cooperation between the various institutions fighting organized crime such as the: prosecutors' office, police, and customs. There are a number of relevant laws that have been adopted and/or amended in this area:

The Ministry of Justice and the Ministry of Interior are responsible in regards to the EU Integration in the sector of organized crime including border management, migration and asylum, police cooperation, human trafficking, narcotics, money laundering. In terms of institutional reform, among others also there is an Office of National Anti-Trafficking Coordinator. Institutionally, there is improvement of the capacity of the General Directorate for the Prevention of Money Laundering (Financial Intelligence Unit — FIU). In the institutional realm also new police structure was set in

order to reflect the priority given to organized crime investigations. The 2010 Report notes that human resources have been relocated to increase the number of staff dealing with organised crime investigations and budgetary provision has been made for further investments. In parallel, the introduction of joint investigative units to fight economic crime and corruption has proved effective.

2011 Report emphasizes that the fight against drug trafficking, money laundering, trafficking in human beings and protection of its victims must be intensified and conducted systematically, and the legal framework for the confiscation of criminal assets systematically enforced.

Chronologically, the 2009 Report notes limited progress fighting against organised crime. The 2010 Progress Report notes progress especially with the Law enabling effective seizure and confiscation of the illegal proceeds of crime and the Law on protection of witness and informants which entered into force in January 2010.

According to the 2012 Progress Report, progress can be reported in fighting money-laundering (pg.57). There is an increase in the confiscation of criminal assets and the Agency for the management of confiscated assets has started auctioning, there is an increase of undercover agents and special investigative measures. And while there were amendments to the laws in line with MONEYVAL recommendations (amending the criminal code), increase in reports from banks, increase of asset sequestration etc., the number convictions is low in proportion to the problem. Implementation of the existing legal framework has to be stepped up and the IT tools and expertise of the relevant agencies need to be strengthened.

With regards to combating trafficking of human beings, the 2009 Report notes the continued implementation of the 2008-2010 national strategy and the strategy for fighting child trafficking and the protection of child victims of trafficking. In February 2011, a National Action Plan for combating human trafficking was adopted. According to 2009 Progress Report Albania is considered moderately advanced in its efforts to fight trafficking of human beings, the 2010 Progress Report notes that despite the good progress, trafficking in human beings continues to be an area of concern as the country remains a country of origin of human trafficking. The 2012 Progress Report notes further progress in the fight against trafficking in human beings (pg.56). The Office of the National Anti-trafficking Coordinator (ONCAT) has improved capacities and increased its work. Albania is no longer considered a major country of transit and although there is a decline in numbers, it still remains a country of origin of women and children trafficked. A multidisciplinary approach to address trafficking in human beings has to be implemented.

The 2010 Progress Report notes that the fight against drugs remains an area of concern, although recently a more active approach has been adopted by law enforcement agencies, resulting in drug seizures. Albania continues to be on one of the Balkan drug trafficking routes and an action plan to fight cultivation of narcotics is being implemented. Modest Progress is noted in cooperation in the field of drugs (Progress Report 2012). There is a new anti-drug strategy as of June 2012.

The 2011 Progress Report noted that the immunity of public officials, the absence of a proactive approach and the lack of resources and equipment continue to seriously obstruct effective investigation. The recent limitation of the immunity of judges and high public officials has ended the issue of immunity and the legislation now needs to be implemented.

There is no solid track record of investigations, prosecution and convictions at all levels and therefore should be established.

Common standard operating procedures between police and prosecution need to be developed in order to further enhance cooperation and trust between them. By-laws of the judicial police law are adopted and need to be implemented.

3.1 Assistance Provided

IPA funding focusing on fighting organized crime is listed below:

Table D.5: IPA Projects, Fight against Organised Crime

IPA	Project title	EC €	Description
2007	PAMECA III (Police Reform)	7,268,790	To improve the performance of the Albanian State Police structures to provide trust, safety and a secure environment to the Albanian citizens. Including an extension for IBM and customs components of 500,000 from CARDS 2006 from May to Nov 2009, and extension from May 2011 to May 2012 for the following components: Public Order, HIDAA, IBM and Serious and Organised Crime.
2009	Witness protection	555,000	Support Criminal Justice reform
2009	Supply of IT equipment Witness Protection	200,000	IT communication equipment
2009	Supply of vehicles for witness protection	265,971	Provision of special vehicles to improve operational efficiency and security of staff and protected persons through the utilisation of properly equipped motor vehicles
2009	Anti-Money Laundering	1,500,000	Fight against organised crime

In regards to ROM Reports in this sector the following ROM Reports are available to the team:

Table D.6: ROM Report ratings of projects, Fight against Organised Crime

Project Title	Year of Report	Sub-Field	Grading RQD	Grading EID	Grading ED	Grading ID	Grading PS
Establishment of International Law Enforcement Co-ordination Units (ILECUs)	2009	Org Cri	C	B	C	C	C
Establishment of International Law Enforcement Co-ordination Units (ILECUs)	2010	Org Cri	B	B	B	B	B
Development of State police's criminal intelligence gathering and analysis capability	(Mar) 2007	Org Cri	B	B	B	B	B
Development of State police's criminal intelligence gathering and analysis capability	(Nov) 2007	Org Cri	B	B	C	B	B
Strengthening the capacity of the Albanian State Police in covert evidence gathering and the use of technical aides to investigation	2008	Org Cri	B	B	B	B	B

Regarding the ratings of the organised crime projects, they were only Bs or Cs, where the table below shows that 80% of the ratings were Bs and the remaining 20% were Cs, and that Effectiveness was the poorest performing category with 60% Cs:

Table D.7: Distribution of ROM Report Ratings, Fight against Organised Crime

	A	B	C
Relevance and Design	/	4 (86.36 %)	1 (13.63 %)
Efficiency	/	5 (100 %)	/
Effectiveness	/	3 (60 %)	2 (60 %)
Impact	/	4 (80 %)	1 (20 %)
Sustainability	/	4 (80 %)	1 (20 %)
Total	/	20 (80 %)	5 (20 %)

3.2 Results Achieved

There has been some progress in fighting organized crime. The legal framework with the adoption of the Anti-mafia Law needs to be implemented. The Criminal Intelligence System (MEMEC) has improved data exchange; however a sound case management system needs to be developed. Trafficking remains to be area of concern as Albania remains the country of origin. There was an increase of confiscation of criminal assets and the Agency for the Management of Confiscated Assets has started to auction them; there is an increase in undercover agents and special investigative measures.

In the field of drugs there has been some progress in cooperation though the production and trafficking remain an issue of concern.

There is a decrease in human trafficking numbers however the country remains a country of origin.

In regards to money laundering, it is considered that the legislative and institutional framework has improved substantially.

3.3 Findings and Conclusions

Improvement of the capacity in the context of the fight against organised crime, including money laundering and trafficking of human beings could be measured for example in the increase of the number of networks dismantled, persons prosecuted, proceeds of crime recovered, persons trained on specific aspects of fighting against organized crime, number and quality of suspicious transactions recorded, increase and use of special investigative means, crime statistics (MIPD 2011-13, pg.16)

Having said this, in particular in fighting organized crime the following should be taken into consideration:

- Implementation of the legislation (especially the so called anti-mafia law) is important and assistance should address needs by the beneficiary for capacity development
- Long term projects or sequencing also seem to be more beneficial

- Though by a slight margin, the weakest point according to the ROM Reports in assistance is effectiveness and it should be addressed.
- Impact and sustainability should be measured in a comprehensive and systematic manner especially by establishing the benchmarks indicated in the latest MIPD 2011-13 (increase in cases prosecuted, increase in the number of suspicious transactions recorded etc.).

4. Fight Against Corruption

Fight Against Corruption is a key priority of the Government of Albania as noted by EC Report 2010. 2011 Progress Report indicates some progress in government's policies to fight corruption with the adoption in June 2011 of the new anti-corruption action plan 2011-2013 with action plans for all government ministries/agencies. While the implementation of the action plans is still ongoing there is an improvement in their quality in particular in the progress monitoring indicators. There has been moderate progress in policies and legal framework to fight corruption in Albania according to the Progress Report 2012. (pg.14). Furthermore, the recent limitation of the immunity of judges and public officials has removed a fundamental obstacle to fight corruption and address the wide public perception about corruption of some members of the society (Progress Report 2012 pg. 14)

One of the priorities for IPA support in the MIPD 2011-2013 is the fight against corruption, the effective implementation of the anti-corruption Strategy and Action Plan; removal of obstacles for investigation such as the immunity for judges and politicians; development of a track record of investigations, prosecutions and convictions (MIPD 2011-2013 pg.10) . The objective is to have an adequate legal framework, enforce legislation and strengthen a capacity to investigate and prosecute corruption cases (MIPD 2011-2013 pg.16).

The legal framework has been strengthened as a result of GRECCO recommendations in regards to incrimination and political party financing.

There is an institution for verifying the asset declarations of public officials or the High Inspectorate for Declaration and Audit of Assets (HIDAA) and a Department for Internal Administrative Control and Anti-Corruption (DIACA). HIDAA can notify the prosecutor's office in case of non-compliance and take administrative measures against civil servants failing to submit their declarations. It is starting to produce satisfactory results though further improvement of cooperation with law enforcement and prosecution offices is needed. The Law on the declaration and audit of civil servants' assets and on the prevention of conflicts of interest were adopted.

.Criminal law statistics remain insufficient or unreliable and investigation is hampered by the lack of access to the various registries (e.g. car registry and land register).

4.1 Assistance Provided

Fighting corruption has received assistance from EC in the past as well while under there are two projects that should be noted:

Table D.8: IPA Projects, Fights against Corruption

IPA	Project title	EC €	Description
2007	PAMECA III (Police Reform)	7,268,790	Improve performance of State Police to provide trust, safety and a secure environment to citizens. Includes extension for IBM and customs components of € 0.5 mil from CARDS 2006, extension to May 2012 for Public Order, IBM and Serious and Organised Crime.
2008	Project against Corruption	2,000,000	To support the Albanian government in strengthening its anti-corruption measures as in its Anti-corruption Strategy (2007-2013)

In regards to ROM Reports in this sector the following ROM Reports are available to the team:

Table D.9: ROM Report ratings of projects, Fight against Corruption

Project Title	Year of Report	Sub-Field	Grading RQD	Grading EID	Grading ED	Grading ID	Grading PS
Tackling Money Laundering and Financial Crime	2011	Anti-Corr	B	C	C	C	C
Project Against Corruption in Albania (PACA)	2011	Anti-Corr	B	B	C	B	B
Project Against Corruption in Albania	2009	Anti-Corr	B	C	C	B	B
Project Against Corruption in Albania	2010	Anti-Corr	B	B	C	B	B

Again the ratings are only in the B and C categories, where overall 60% are Bs and the remainder are Cs, so a higher percentage of Cs than for the organised crime projects. Again Effectiveness scores the worst, which is somewhat surprising, since if a project is not considered very effective it is difficult to see how Impact would be any better:

Table D.10: Distribution of ROM Report Ratings, Fight against Corruption

	A	B	C
Relevance and Design	/	4 (100 %)	/
Efficiency	/	2 (50 %)	2 (50 %)
Effectiveness	/	/	4 (100 %)
Impact	/	3 (75 %)	1 (25 %)
Sustainability	/	3 (75 %)	1 (25 %)
Total	/	12 (60 %)	8 (40 %)

4.2 Results Achieved

A number of strategic documents in the field of anticorruption have also been developed and adopted. The immunity granted public officials (politicians and judges) instead of increasing their independence has proven to be a serious obstacle to fighting corruption. Therefore, the limitation of the immunity represents a significant step towards fighting corruption. PACA Project Assistance for example focused on legislative change, GREECO Recommendation areas, improvement Anti-corruption Action Plan 2011-2013, Guidelines and Manuals for beneficiaries. In regards to tackling money laundering and financial crime it supported in particular the FIU; main output was a Medium and Long Term Strategy and Work Plan for the Expansion and Development of the Financial Crime Investigation for the Government of Albania. There were amendments to the Law on Prevention of Conflict of Interest in the Exercise of Public Functions and amendments to the Law on Declaration of Assets and Audit of Assets and Financial Obligations of Elected and Some Public Officials aiming to strengthen HIDAA's capacity (Progress Report 2012, pg.15)

Institutions for fighting money laundering and corruption are focused in the: Ministry of Finance, General Directorate of Money Laundering, Financial Intelligence Unit (FIU), Department of Internal Administrative Control and Anti-corruption (DIACA), OPDAT, Joint Investigative Units (JIU), Fighting Corruption and Economic Crime High Inspectorate for Declaration and Audit of Assets (HIDAA), in the General Directorate of Customs a New Internal Control Department established.

The institutional framework is mainly focused in the Department of Internal Control and Anticorruption (DIACA) and High Inspectorate for Declaration and Audit of Assets (HIDAA).

DIACA's capacities are limited due to lack of resources and the monitoring of implementation of the action plan is insufficient. There is an increase in the number of corruption cases been investigated and prosecuted however the conviction rates remain very low.

4.3 Findings and Conclusions

There is a perception of corruption that needs to be addressed. There is positive shift forward as the legal framework in regards to fighting corruption is largely in place. The limitation of the immunity of judges and high public officials has removed a major legal obstacle to address the high perception of corruption in these segments of the society. The primary focus should now be on implementation and achieving impact and sustainability. In this regards the institutions involved in fighting corruption should be empowered to do so. DIACA has a need for further staff and monitoring competences and has limited capacities to coordinate anti-corruption policies; in addition the HIDAA has limited resources. There is lack of Car registry and Land registry causing difficulties. Medium and high level corruption cases are rare. In particular, in fighting corruption:

- The main focus on fighting corruption is in the implementation of the legislation and improvement of cooperation between the various institutions.
- A more comprehensive approach in assistance requiring for the involvement of the public (NGOs and the media in particular) is required
- The limitation of the immunity of judges and high public officials represents a good opportunity to address corruption;

- A general track record should be in place. In particular, a track record for high level cases should be established.
 - Institutions fighting corruption should have the necessary resources for more efficient implementation of the laws on fighting corruption
 - Effective statistical data should be established (car and land registry among others) as they represent some of the main tools in fighting corruption.
 - Effectiveness of projects should be enhanced as they prove to be weakest element of EC assistance according to the ROM Reports.

5. Looking Ahead

When looking ahead regarding how EC resources for Rule of Law can be better programmed, the team has relied on various sources of information, as provided below.

5.1 Relevant Studies and Evaluations

There are four sets of studies that will be looked at: a CARDS programme evaluation from 2009; the ROM reports that have been presented above; the mid-term meta-evaluation of IPA assistance; and a review to look at the preparation for IPA assistance after 2013.

5.1.1 CARDS Evaluation

An evaluation of the previous CARDS Assistance for Albania was conducted and a report was published in 2009. The evaluation gives some general assessments on the assistance provided but also more relevant to this evaluation also in regards to the sector of Justice and Home Affairs.¹⁹

In more specific terms the general evaluation of the CARDS Assistance to ALB provides the following details:

The assessment of CARDS Assistance also covers Assistance in **Justice and Home affairs**. The following table provides some of the main findings based on the data from the evaluation:

Table D.11: Ratings in CARDS Evaluation

CARDS Evaluation (December 2008)	CARDS: Overall	Cluster Justice
Relevance	Satisfactory	Satisfactory
Efficiency	Moderately Satisfactory	Satisfactory
Effectiveness	Moderately Satisfactory	Moderately Satisfactory
Impact	Moderately Satisfactory	Moderately Satisfactory

¹⁹ Note: there is a difference in the evaluation marks as CARDS uses a 6 level grading: HS = highly satisfactory, S = satisfactory, MS = moderately satisfactory, MU = moderately unsatisfactory, U =unsatisfactory, HU = highly unsatisfactory. The ROM reports use 4 level grading: A= very good; B= good; C= problems; D= serious deficiencies.

Sustainability	Moderately Satisfactory	Moderately Satisfactory
OVERALL	Moderately Satisfactory	Moderately Satisfactory

In, particular, Annex 3 of the CARDS Assessment provides the following detail about the individual projects in the Justice Cluster.

Table D.12: CARDS Evaluation Ratings, by Sector/Projects

Cluster/Criterion: JUSTICE	Relevance	Efficiency	Effectiveness	Impact	Sustainability
EC Justice Assistance Mission (2002)	S	S	MS	MS	MU
IV Joint Programme with COE (2002)	S	S	S	S	MS
Renovation of two courts of appeal (2003)	HS	HS	S	MS	S
Pre-trial detention centre of Vlora (2003)	HS	HS	S	S	S
Support to HCJ and its Inspectorate (2004)	S	S	MS	MU	MS
Commercial justice system (2004)	S	HS	MS	MS	MS
School of Magistrates (grant) (2005)	S	S	HS	MS	MS
General Prosecutors Office (twinning) (2005)	S	HU	HU	NR*	NR*
Total	S	S	MS	MS	MS

From the data above it can be seen that in general terms CARDS Assistance in Albanian in the justice sector has received quite similar grades as the overall performance of the CARDS assistance in the country.

5.1.2 ROM Reports

The team had access to a total of 31 ROM reports, as presented above: 22 regarding general judicial reform, five related to organized crime and four with respect to fight against corruption.

The performance ratings across the three kinds of interventions showed some differences in terms of quality. The only As that were awarded were in the field of judicial reform, but this was still limited to Efficiency considerations on only 2 of the 22 projects. While one should be careful about reading too much into percentage distributions on the small number of organised crime and anti-corruption projects, it is still interesting to note that the ROM reports believe that there is a greater probability of sustainability in these fields than in the area of judicial reform, something that on the face of it is somewhat difficult to understand. Overall, having nearly 75% of the ratings being very positive Bs and only one-fourth of the ratings Cs in such complex and conflictual fields is on the one hand very positive yet is also a warning about using snap-shot assessments – which the ROM reports largely

are – as the only foundations for understanding longer-term likely results such as sustainability and impact:

Table D.12: Overall Distribution of ROM Ratings, sub-fields of Rule of Law

	A	B	C
Relevance and Design	/	27 (87.09 %)	4 (12.9 %)
Efficiency	2 (6.45 %)	22 (70.96 %)	7 (22.58 %)
Effectiveness	/	20 (64.51%)	11 (35.48 %)
Impact	/	26 (83.87 %)	5 (16.012 %)
Sustainability	/	17 (54.83 %)	14 (45.16 %)
Total	2 (1.29%)	112 (72.25%)	41 (26.45%)

5.1.1 Midterm Meta Evaluation of IPA Assistance

According to MIPD 2011-2013, the Mid-Term Meta Evaluation of IPA assistance confirmed CARDS evaluation findings. With regard to intervention logic of assistance the conclusion is that the objectives are not clearly prioritized in the programming document and not supported by measurable impact indicators.

To improve IPA programming and increase ownership, the national IPA coordinator should be more active in the preparation, selection, prioritisation, sequencing and quality assessment of project proposals.

With regard to effectiveness, it is difficult to assess as much of IPA projects are ongoing though the expectations are that the objectives will be delivered; it is strongest in areas related to the alignment/adoption of the acquis.

Beneficiary involvement in the project design and implementation is a key for efficiency, effectiveness as well as to ensure impact and sustainability.

Follow-up is required: in 3-6 months for twinning and in 6-12 month the beneficiary should submit reports on impact and sustainability.

5.1.1 Evaluation to Support the Preparation of IPA Assistance beyond 2013

This evaluation among others makes the following important points: the current instrument should continue beyond 2013; the role of regional programmes and the sector approach should be strengthened; MIPD's should be genuinely multi-annual and the planning of activities should be multi- annual; beneficiary and stakeholder involvement in the programming should be strengthened as well as more NGO involvement; there should be incentive mechanisms in place for good performance as well as systematic use of conditionality when disbursements are not met; beneficiaries should have access to the various components if they are willing and able to implement them and the component structure should not limit effective use of resources.

The financial support is provided through relatively complex planning and implementation procedures which have contributed to some delays. Monitoring and evaluation should be based on the progress relative to the: path to accession; national strategies; achieving programme, sector and measure level results.

5.2 IPA Assistance: Lessons Learned

The preliminary findings identified below are based on the results of interviews undertaken in Albania.²⁰

The structure of the interview in general terms was sequenced into the following main parts: key factors for success to rule of law projects, key challenges and the key priorities suggested/recommended.

According to the majority of interviews the greatest problem in regards to the rule of law is the high level of corruption in the judiciary which has to be addressed. The perception of corruption in the judiciary is high not only by the local stakeholders but also among international organizations. Primarily, this was attributed to the immunity of judges and high public officials which has lately been addressed by the limitation of the immunity. Second, improving the conditions in the judiciary by raising salaries and providing the necessary working conditions and infrastructure also should play a role in fighting corruption. In terms of the independence of the judiciary in many interviews it was mentioned that it should be enhanced as there are instances of political pressure. A USAID Project dealing with judiciary seemed relevant for fighting corruption as it aimed to maximize transparency by video and audio recording every court hearing and making it available to the public.

With regards to fighting organized crime, there seem to exist more of a positive opinion compared to the other sectors. There is a decrease of human trafficking numbers, an increase in seizures of drugs and narcotics, money laundering is being tackled, an increase in confiscation of assets. Especially the adoption of the anti-mafia law was considered a very positive step forward though its full implementation remains to be seen.

In regards to fighting corruption, on a number of interviews it was mentioned that the country needs to do more.

A cross cutting issue specified dealt with very high turnover of staff in the line ministries hampering sustainability of human resource capacities. Moreover, there are insufficient budgetary resources to address the needs of the institutions.

The progress report is seen as a lost opportunity to express in a clearer terms the situation in the field and the priorities to be addressed. The main priorities as listed by the informants are: corruption in the judiciary, abolition of immunity of judges and politicians, inclusive process of the civil society in the sectors.

²⁰ These are not necessarily the findings/ recommendations of the research team. These are simply the recommendations as listed by the informants. Informants were in general of three types: a) national authorities having benefited from EC assistance; b) EUD and donor community, c) civil society and individual experts. Most informants were suggested by EUO.

The sectoral approach seem to be accepted as a good idea, though it remains unclear how much of a burden will be for the national institutions.

When reviewing the views of informants regarding how IPA funds could be programmed, these can be grouped into four categories: general framework conditions for programming in BiH, and then three dimensions of the activity cycle: the programming of the activities; the implementation; and how results are monitored, reported and used.

5.2.1 Programming Financial Assistance

In order to be more effective IPA should focus its programming in limited sector priorities and in successive years of assistance. A major programming weakness according to a 2009 evaluation carried out by the MEI for the EUD, was that the line institutions engaged in preparing project fiches had insufficient numbers of staff dedicated to programming.

In regards to programming, having in mind among others much of what was stated above these are some of the key aspects:

Programming: For Albania but also for other WB Countries it is important for the EC Assistance to have the specific benchmarks and indicators in the rule of law and the sub sectors which are missing thus making the evaluation of assistance and impact in particular very difficult. In general it is considered by the IPA Mid Term Evaluation that in key programming elements (objectives, project selection, financial and time plans, sequencing, link to national strategies, donor coordination) much improvement in quality was noticed since 2007. As in Macedonia, IPA programming in the Justice sector is coordinated by the Ministry of Justice. At time, this may have the potential of conflict of interest in cases when projects supporting further the independence of the judiciary will be proposed.

IPA Procedures: timely planning is considered by MIPD 2011-2013 as essential to address the key areas as past assistance. CARDS and IPA have shown that time is essential not to make projects obsolete due to late implementation (MIPD 2011-2013 pg.7). In addition this seems to be the case in understanding basic knowledge of IPA templates and procedures, lack of capacity to develop investment/costs plans, lack of specific practical training on PCM and procurement and contractual procedures.²¹ IPA procedures are considered complex, lengthy and require significant capacity by stakeholders. As in other WB Countries, especially, NGO's complained during the interviews that they lack capacities to apply for IPA projects. The time between the programming and the implementation takes years and the lack of flexibility for change very often in such a dynamic field as the rule of law (judicial reform, organized crime, and fight against corruption) makes the assistance outdated. Because of this long preparation period, beneficiaries complains that IPA cannot be used to address criticisms expressed in the Progress Reports immediately in the following year.

Decentralized Management: Albania has not yet started with the Decentralized Management of IPA as did Croatia and Macedonia. There are many lessons to be learned by the experiences of

²¹ Strategic/Interim Evaluation of EU IPA Pre-Accession Assistance to Albania, Evaluation Report, Project No.2010/231987-Version 2, pg.43

these countries and they should be taken into account. It represents a challenge and the mistakes learned from Croatia and Macedonia should not be repeated.

Ownership: Is considered to be essential for targeting of assistance and achieving results, therefore the MIPD 2011-2013 focuses on taking significant efforts in involving the institutions in the planning and programming of assistance (MIPD 2011-2013, pg7).

Sector Approach: According to IPA midterm evaluation for Albania, there are many prerequisite for this approach in Albania, though the administrative capacity is relatively low (MIPD 2011-2013 pg.8). According to the Interim Evaluation of IPA, for successful sector based approach the country should have Strategies that contain SMART indicators of performance at the result level; EC should conduct Ex-ante control strategies to cover three year periods; more time should be introduced for project preparation, needs analysis should be conducted on the government for the indication of sectoral approach. Full establishment of the Integrated Planning System should be made to ensure and this should be for sectoral based approach for Albania (page VI).

The IPA Midterm evaluation also confirmed that the administration has potential to develop necessary capacities in immediate to short term. The sectoral approach is considered a good idea for IPA Programming in Albania as well. The difficulty here is also the absorption capacity of national institutions to address the challenges foreseen with the sectoral approach

MIPD's: According to the IPA Evaluation for Albania (pg. iv) the quality of intervention logic in MIPDs should be improved by reducing the scope of strategic and priority objectives via introduction of targets and indicators which can be verified. At the programming level there is a need for better focus and enhanced linkage with the MIPD set priorities.²² This is in line with the general perception with other country MIPD's that they should be more focused and have specific objective indicators as mentioned above.

Progress Report: influences much of EU integration including assistance and programming. IPA due to its lack of flexibility cannot address Progress Report criticism in the Rule of Law during the following year as it takes at least two years from approval up to implementation of an IPA project. In addition, in a number of interviews it was mentioned that it is too vague and sometimes political. Many informants underline the fact that the Progress Report (PR) is not adequate to assess progress on RoL. It is too vague and ambiguous to identify concrete weaknesses and propose practical solutions. A Progress Report that would be more detailed and structured in the RoL could be an important tool to guide beneficiary towards progress and to facilitate coordination among donors.

Fatigue towards EU integration: many informants note a fatigue towards EU integration. In the enlargement process public support is the key to the success.²³ Several sources recommend adopting a development approach rather than an integration approach on RoL.

²² Strategic/Interim Evaluation of EU IPA Pre-Accession Assistance to Albania, Evaluation Report, Project No.2010/231987-Version 2, p. iv

²³ Communication from the Commission to the European Parliament and the Council, Enlargement Strategy and Main Challenges 2011-2012, Brussels 12.10.2011, COM (2011) 666 final, p.22

5.2.2 Implementation of Activities

In regards to implementation of activities a number of key points have been raised:

Ownership: evaluations exemplify that for example IPA 2007-2008 programming has had major issues in implementation in terms of lack of financial resources in beneficiary institutions, failure to meet project preconditions, poor capacity to prepare technical documentation and lack of cooperation between line institutions which was impediment on efficient implementation of the projects. Thus, it is indispensable to open avenues for more ownership of the beneficiary institutions through involvement in procurement and the implementation of the IPA assistance.²⁴ Ownership is a key to success as projects need to be steered by the beneficiary.

Lack of resources: the numbers of staff working on EU integration is low and there is a lack of knowledge and understanding of techniques and procedures.²⁵ Furthermore even with these low numbers there is a significant difficulty raised by many interviews that there is a very high of turnover of staff in the institutions decreasing further their capacity. This was also noted by the MIPDs and the CARDS specifying high staff turnover as one of the main causes of low capacity. There should be a mechanism to ensure the reduction of the percentage of turnover. A third constraint on administrative capacity is staff knowledge and understanding of techniques and procedures. An assessment carried out by PPF identified weak capacity by institutions in sector analyses, in using techniques such as SWOT analysis, PCM, impact assessment, indicators, reporting skills.

In addition there are budget and infrastructure limitations to further enhance the capacities of the various institutions in all the three sectors. This issue should be addressed either by increased funding or further commitments by national authorities in order to achieve the required impact.

Delays in implementation: on top of the formal requirements in regards to time envisaged between the time of programming and implementation additional delays in IPA are quite evident. The implementation is at times delayed for a number of reasons including lack of capacities by the contractor, stakeholder and quite often due to lack of flexibility. An interesting example of a delay of implementation of assistance related to problems of land ownership for assistance in the infrastructure.

Type of assistance: in a number of evaluations and during the interviews it was mentioned that twinning is preferred as a type of assistance as the experts are in the beneficiary and are daily committed to assist them.

International expertise: at times there is an issue of the capacity of the experts working in a RoL projects and therefore they need to be experienced and motivated. Their inputs need to be based on clear TORs. Beneficiaries are not involved in their selection though the TORs and CV need to be endorsed by beneficiary authorities prior to their engagement. In some particular instances legal experts in the RoL field coming from common law systems have difficulties of compatibility in a civil law system as MKD. Twinning resident advisers are considered particularly effective.

²⁴ Strategic/Interim Evaluation of EU IPA Pre-Accession Assistance to Albania, pg.48

²⁵ Strategic/Interim Evaluation of EU IPA Pre-Accession Assistance to Albania, pg.42

Length of projects: according to IPA midterm evaluation sequencing of project was assessed to be good. In limited number sectors annual programming can be made more effective by focusing IPA assistance consistently, in successive years by sequencing in a number of interviews. progressive way project to lead to sector strategic objectives.²⁶ Such a position was also stressed by a number of interviews. This is perhaps more true when it comes to the rule of law projects as long term approach permits to gradually change mentalities and to show commitment/ resolution from the donor's side. It is stressed that RoL assistance should be lengthier as it is complex requiring: legislative and institutional reform, implementation and quite often mentality change as well. Such an approach through IPA is quite complex as first there is a limitation on the length of the project and second sequencing also is rather complex and requires time.

Incentives/Conditionality: the idea of having incentives for good performance and the conditionality for bad performance are often discussed. Incentive (sometimes as disguised conditionality) seems to be a positive approach that would enhance the efforts for better performance and its use should be reviewed. An example of a good incentive mentioned in some interviews is a competition between WB countries for reforms such as the public pressure to commit to reforms and achieve visa liberalization as soon as possible after the visa liberalization by FYR Macedonia.

Commitment of donors: the commitment of donors reflected by the willingness to establish long term relations with the beneficiary and by having relevant experts in post for long period. Commitment of donors is also reflected by the **flexibility** of the assistance and its ability to adjust to the needs of the beneficiary.

5.2.3 Monitoring and Reporting Results

This seems to be a rather difficult aspect of EC assistance. The EC should carry out ex ante control of strategies in order to ensure their quality in particular in their monitoring.²⁷

Lack of established indicators in RoL and the sectors addressed here: there are no formally accepted specific set of indicators. The approach by the MIPD is that for the future the following indicators are foreseen to assess EU support:

Follow-up is required: It is essential to do a follow up of assistance and this is inexistent as a formal procedure for all projects. One idea is to have in 3-6 months for twinning and in 6-12 month the beneficiary should submit reports on impact and sustainability.²⁸

Focus on impact: it is yet too early to analyse specifically IPA impact as there are not many projects completed. The IPA midterm evaluation suggests that projects should also include arrangements after their implementation to insure their sustainability. A particular focus on impact is required for an effective rule of law assistance. Impact should be assessed systematically and comprehensively. EC assistance should focus on impact in the future especially having in mind that much of the legislative and institutional framework is in place.

²⁶ Strategic/Interim Evaluation of EU IPA Pre-Accession Assistance to Albania, p. v

²⁷ Strategic/Interim Evaluation of EU IPA Pre-Accession Assistance to Albania, p.vi

²⁸ EC Funded Mid-term Meta Evaluation of IPA Assistance, Evaluation Report Final Version, 22/02/2011, p. vi.

Evaluations exemplify that in terms of impact and sustainability the projects have satisfactory level. However in terms of ownership more efforts to be dedicated in inciting commitment of the beneficiary institutions to maintain the project results.

In 2010 the Government approved and is now implementing a result-based monitoring mechanism that supports sector strategies implementation. This monitoring mechanism, coordinated and overseen by DSDC aims to: i) help line ministries in their program policy analysis, ii) improve the implementation of their sector strategies, and iii) feeding findings from monitoring into the subsequent policy and MTBP cycle. This process should reinforce the implementation of NSDI „ (MIPD 2013, pg. 7)

Access to evaluations: as this project is facing this particular difficulty it should be stressed that making the few evaluations available also open to the public would enhance further pressure for better use of the assistance provided.

5.3 Recommendations

CARDS and IPA assistance have been essential instruments for providing assistance to Albania in the fields of judicial reform, organized crime and fight against corruption, and future support in these fields will clearly be based on the positive experiences that exist. At the same time, a number of stumbling blocks and areas for possible improvement have been identified by a number of key stakeholders on the ground. These form the foundations for the recommendations below regarding how EU financing in the next programming cycle can be made more efficient and effective:

1. **Flexibility of IPA** should be addressed as far too much of the implementation difficulties are attributed to rigid rules for IPA funds programming, implementation and modifications.
2. **Ownership** by the beneficiary through stronger engagement in programming and implementation is critical, and time constraints should not undermine the ability for such participation to be real. Ownership can also be strengthened during implementation if proper incentives for this can be found, though there is a need to be realistic about the value of different kinds of incentives: in a number of states, including Albania, achieving EU visa liberalization was a powerful incentive while it lasted – and as soon as that objective was achieved, much of the larger commitment seems to have weakened.
3. **Impact should be monitored** as part of a systematic and comprehensive approach to tracking performance regarding judicial reform, fighting organized crime and corruption. In general it is considered that much of the legal and institutional framework in rule of law and the sectors under review is in place and now the focus should be more on tracing through the impact of their implementation. For example in fighting organized crime the legislation (Anti-Mafia Law) is said to be of a higher standard than in some EU countries but the challenges remain in implementation.
4. **Corruption in the judiciary** represents a major challenge. The public perception is that corruption is very high and this clearly impacts the rule of law situation. It is therefore important that special attention be paid to this issue, with clearly spelled out success criteria for action.

5. **The abolition/limitation of the immunity of judges and politicians** is seen by many as the most important imminent reform needed for Albania. This issue has consequences not only within the judiciary but also in fighting organized crime and corruption.
6. **The sectoral approach is considered a good idea** for future IPA Programming but a number of institutions do not feel they are sufficiently prepared for this. Sector programming requires cross-institutional collaboration, trust and willingness to work together to produce towards common objectives, and also more predictable framework conditions such as longer financing horizons. Capacity and knowledge about how sector programming is done and is implemented is also seen as lacking in some offices, so capacity building to ensure that this can be done is required.
7. **Decentralized Management lessons need to be transmitted.** Albania has not yet started with the Decentralized Management of IPA as have Croatia and Macedonia. There are many lessons to be learned from the experiences of these countries and they should be taken into account, to avoid possible weaknesses that have been identified in Croatia and Macedonia.
8. **Independence of the Judiciary should not be coordinated by the MoJ.** IPA programming in the Justice sector is coordinated by the Ministry of Justice. At times this will have the potential of conflict of interest in cases when projects supporting further the independence of the judiciary will be proposed.
9. **Benchmarks and indicators for Rule of Law performance should be established.** For Albania but also for other Western Balkan countries it is important for the EC Assistance to clarify the particular benchmarks and indicators that the EC would like to have in place to track the relative successes of interventions. This is in particular necessary for being able to monitor future impact of EU support (recommendation 3 above).

Annex E: Country Report, Bosnia and Herzegovina

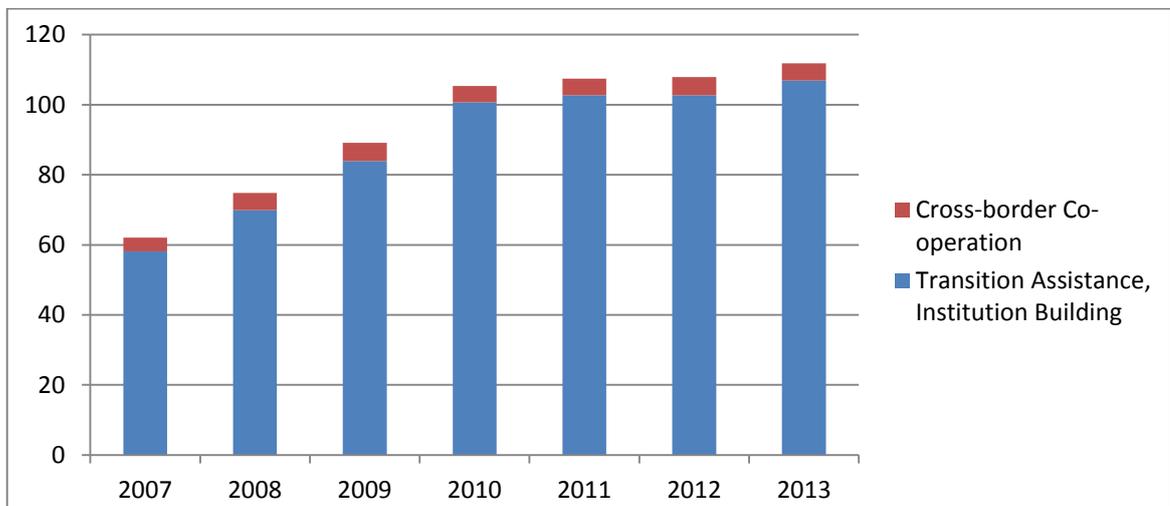
1. Country Strategy and Programme

Bosnia and Herzegovina (BiH) proclaimed independence in 1992, followed by a bloody war that ended with the Dayton Peace Agreement (DPA) in December 1995. The DPA gives most authority to the two Entities, Republika Srpska (RS) and the Federation of Bosnia and Herzegovina (FBiH), with a weak state structure on top. The district of Brčko has a high degree of autonomy outside the two Entities, while FBiH is sub-divided into ten Cantons, each with considerable powers on legal matters. The country with less than 4 million inhabitants thus has 14 ministries of justice and a similar fragmentation when it comes to police services.

The Stabilisation and Association Process (SAP) proposed by EU in 1999 included BiH, and the BiH Council of Ministers (CoM) confirmed its commitment to EU integration as a priority in October 2002. In 2004 the first European Partnership (EP) was formally adopted with a detailed plan for BiH's process towards EU membership. 16 priority reforms were identified, and based on the CoM's programme to address these, the formal Stabilisation and Association Agreement (SAA) negotiations began in November 2005. The SAA was signed in June 2008, and the EU Integration Strategy was adopted by BiH the following month. However, implementation of the steps necessary to reach EU Candidate status has been poor, with major hurdles remaining.

During the period 2001-2006, BiH received € 503 million from the EU over the Community Assistance for Reconstruction, Development and Stabilisation (CARDS) program, with an average of about € 50 million during 2005 and 2006. As of 2007 the funding is over the Instrument for Pre-Accession Assistance (IPA). For the seven years 2007-2013, a total of € 659 million has been provided or is foreseen for the first two components of IPA, Transition Assistance and Institution Building, and Cross-border Cooperation, as show in figure E.1 below. There has thus been a gradual increase in funding levels since 2005.

Figure E.1: IPA Assistance, BiH, 2007-2013, in € million



BiH's Directorate for EU Integration (DEI) answers directly to the BiH CoM, and is responsible for the programming and quality assurance of EC support on the BiH side. The Director of DEI was made National IPA Coordinator (NIPAC) only in 2010. While DEI now has its own Monitoring and Evaluation unit, this is still limited and does not carry out own quality assurance tasks but rather comments on and makes recommendations based on EC reporting, such as the Results Oriented Monitoring (ROM) reports. While BiH began the preparations for Decentralised Implementation System (DIS) back in 2005, the country has not yet fulfilled all conditions necessary for the full transfer of responsibilities.

Regarding the strategic planning framework for IPA financing, in 2010 there were *66 strategies adopted at state and Entity levels of government. However, only a limited number of areas enjoy comprehensive sectoral strategies linked with appropriate action plans and connected with the budgetary framework*" (Picard and Kacapor 2010, p. 9). Given this background, the move to a sector based approach to programming that was begun with the Multi-Annual Indicative Planning Document (MIPD) for the period 2011-2013 selected only one sector, namely **justice**, as a pioneer. It was selected based on "*meeting appropriate minimum conditions – high priority in the EU accession process; existence of an overarching strategy; inter-ministerial cooperation and joint support by donors*" (ibid p. 9).

1.1 Rule of Law Situation

Within the field of Rule of Law, the major issue is the fragmented national polity along ethnic-geographic lines. Allocation of decision-making positions within the public sector at State, Entity and often also at Canton levels is based on ethnic considerations. At State level, an ethnic "balance" is achieved by having senior posts filled by staff from the three dominant ethnic groups, thereby ensuring that all ethnic-political conflicts are reproduced within the senior management of any given ministry. This disfunctionality is continued and strengthened by the political parties largely being defined along ethnic lines, so that politics follow the same ethnic-geographic divisions. The EC Progress Reports consistently refer to political interference in the judicial system as a major cause of concern.

To address the sector problems, a comprehensive **Justice Sector Reform Strategy** (JSRS) for the period 2008-2012 was produced through a joint effort by the Ministries of Justice at State, Entity and Canton levels, Brčko district and the High Judicial and Prosecutorial Council (HJPC). The process included representatives of professional associations of judges and prosecutors, bar associations, association of mediators and NGOs, with the aim of addressing key issues within the sector over a five year timeframe, with agreed priorities and action plan (see box E.1). There has been little progress since political actors have not agreed on implementation of parts of the action plan.

Because implementation of the JSRS was not moving, the EC put in place the **Structured Dialogue on Justice**. This is a platform for the EC and a wide range of political actors on the Bosnian side to discuss how the country can align its judicial system with the EU *acquis* and where the aim is "*the development and consolidation of an independent, credible, effective, efficient, impartial and accountable judiciary*" (EC fact sheet). The Dialogue is meant as a continuous process but with six-monthly meetings, where the first three took place in Banja Luka (June 2011), Sarajevo (November 2011) and Mostar (July 2012). As a result of these meetings, the EC has summarised

approximately 65 implicit or explicit recommendations that have been arrived at during the discussions though the reporting does not provide information on follow-up and results.

Box E.1: Justice Sector Reform Strategy (JSRS) 2008-2012

The JSRS is a comprehensive strategy where the agreed Vision for the justice sector is “*An efficient, effective and coordinated justice system in BiH that is accountable to all BiH citizens and is fully aligned with EU standards and best practices, guaranteeing the rule of law*”.

It lays out four objectives, where the first one on the judicial system is “*Further strengthen and maintain independence, accountability, efficiency, professionalism and harmonisation of the judicial system which ensures the rule of law in BiH*”. This is then broken down into three functional areas that contain strategic programmes with timelines, responsibilities and performance indicators.

The first area concerns ***independence and harmonisation***, with five strategic programmes, where the first three address the need for protecting the sector’s independence through better protected funding while the two other address the need for harmonised procedures for appointing judges to the three Constitutional courts, and single law on prosecutors’ offices in FBiH.

The second area is ***efficiency and effectiveness*** where the eight programmes address issues of backlog of cases, more efficient use of ICT, review alternative measures for less serious crimes, infrastructure improvements, and capacity building for better court administration, as well as review the number of judges and prosecutors needed.

Finally, ***accountability and professionalism*** is to reduce court processing times, reform the bar exams, improve the Judicial and Prosecutorial Training Centres and improve records and statistics.

The JSRS notes three key issues that the parties were not able to reach consensus on: establishing a single substantive and procedural law in criminal and civil matters; the creation of a single budget for judicial institutions, and the possible establishment of a BiH Supreme Court.

The strategy does not contain any costing of neither the various programmes nor any indications of how the activities are reflected in the various BiH/RS/FBiH budgets or prioritised there.

While there is a ministry of justice at State level, it has limited staff and authority. The High Judicial and Prosecutorial Council (HJPC) is, however, a national body of importance, as it reviews and approves all judges and prosecutors in BiH, and also has the power to discipline any judge or prosecutor found to be in violation of existing laws and ethical standards. The HJPC is considered a major success in terms of providing a coherent and reasonably transparent body for ensuring that the judiciary has qualified and independent personnel running the courts and prosecutions. Exactly because the HJPC has a mandate that allows it to interfere within Entity judicial systems, it has in periods found itself under strong attacks from political leaders, especially the RS, as its position within the constitutional framework is not considered fully secure.

The area that has probably seen the most progress is the introduction of modern information and communications technology (ICT), whereby now virtually all actors – judges, prosecutors, defence lawyers, police – have access to an increasingly complete body of jurisprudence relevant to BiH.

The lack of harmonisation of budgetary procedures across the 14 authorities remains a major obstacle. The fact that there is not one integrated budget under the authority of the court system provides political actors a leverage point regarding the working of the judiciary.

1.2 Country Programming and Country Programmes 2007-2011

The general structure for the programming of the IPA funds over the period 2007-2011 is shown in figure 2.1 in the main report. A key consideration with the introduction of IPA funds was to strengthen national ownership and gradually move towards the Decentralised Implementation System for IPA funds. The strengthening of the DEI was a key step in this process, as was the introduction of Senior Programme Officers (SPOs) in the ministries with particular responsibility for the IPA funds.

Focus in the programming of the IPA funds has been on the first Component, of Transition Assistance and Institution Building (TAIB), which is the focus of attention here. The first MIPD was for the period 2007-2009, and had as priority to strengthen administrative capacity and constitutional reforms to ensure BiH becomes a democratic, functional and viable state. A second priority was support to civil society. Of the five cross-cutting issues mentioned, the one relevant to the Rule of Law was focus on action instruments for Good Governance with particular attention to the *fight against corruption*.

Of the ten main areas of intervention identified under the political requirements of the Copenhagen criteria, two are (i) reform of the judicial system, and (ii) advancing the anti-corruption policy. The actual programmes foreseen were to provide adequate staffing, infrastructure and equipment to the judiciary, institution and capacity building to the State ministry of justice, and juvenile justice and prison reforms. In the second area support was to be for a detailed anti-corruption action plan.

In the MIPD for 2009-2011, the objectives were slightly reformulated, with expected results and indicators for judicial reform stated as *“The justice sector institutions at all levels of Bosnia and Herzegovina's institutional system are effectively organised and functioning and co-operation between police, prosecution, courts and the penitentiary system is improved....and a single judicial budget as well as a single criminal law”* (MIPD 2009-2011, pp. 15-16).

In the MIPD two years later (MIPD 2011-2013, draft), the structure is changed towards a sector grouping of objectives, where the first one was termed Justice Sector Reform and Law Enforcement. The objectives for the support was said to be:

- “To strengthen the **independence** of the judiciary through the introduction of transparent budgetary procedures and supporting the reform of the legal framework.
- To improve the **efficiency** of the judiciary through reducing the length of court proceedings and decreasing the backlog of cases.
- To enhance the **effectiveness** of the judiciary through improved judicial facilities, particularly at Entity and lower level, better training systems for all staff in the justice sector and through enabling better witness protection.
- To improve the **accountability** of the judiciary through improving the legal framework for disciplinary proceedings and introducing performance monitoring mechanisms“ (MIPD 2011-2013, p. 14).

There are, however, no criteria for allocating resources across different objectives, nor any performance or success criteria for measuring results from the funding against.

The national programmes that are derived from the MIPDs and the national consultations provide the project initiatives that are to be funded over that year's IPA allocation. Those that are of interest for this review concern the three key areas that have been defined for this task, namely judicial reform, fight against corruption and fight against organised crime. The MIFFs/MIPDs do not have the fight against organised crime as a specific field, so the project initiatives are listed under the first two headings only in table E.2 below.

According to the project fiches, there were therefore a total of eight projects in the field of judicial reform, with total budgets of about € 18.5 million, while the three anti-corruption projects received allocations of € 3 million.

Table E.2: Relevant Rule of Law Projects in the National Programmes 2007-2011

National Programme	Judicial Reform projects	Ant-corruption projects
2007	<ul style="list-style-type: none"> • Strategy planning, aid coordination and European integration capacities in the Ministry of Justice of BiH • Establishment of a Case Management System (CMS) for courts and prosecutors • Training SIPA's FID, financial regulatory agencies Total budgets: a little over € 2.1 million	n.a.
2008	<ul style="list-style-type: none"> • State court and prosecutor's office, focused on war crimes and organised crime • Funding for HJPC and in particular ICT equipment for courts and prosecutors' offices Total budgets: € 4.4 million	<ul style="list-style-type: none"> • Small grant for CSOs fighting corruption Total budget: € 0.5 million
2009	<ul style="list-style-type: none"> • Continued support to courts and prosecutors' offices Total budgets: € 4 million	<ul style="list-style-type: none"> • Aid to the anti-corruption agency Total budget: € 0.5 million
2010	<ul style="list-style-type: none"> • Strengthening of the technical and professional capacities of the judiciary. Total budget: € 4 million.	<ul style="list-style-type: none"> • Implementation of the national anti-corruption strategy Total budget: € 2 million
2011 (1)	<ul style="list-style-type: none"> • Justice reform Total budget: € 4.0 million (a further € 1.2 million is provided for prison reforms)	n.a.

(1): The National Programme for 2011 does not break down allocations by projects as the previous ones do, as it has moved towards sector programming and thus only provides a general allocation.

1.3 Findings and Conclusions

On the **overall programming**:

- Programming of IPA funds are driven by an overarching body of policy and agreements, as reflected in the European Partnership/SAP/SAA “policy box” in figure 2.1.
- The MIFFs and MIPDs as three-year rolling programmes that are revised annually provide a strategic and financial framework for annual IPA allocations. They are updated with inputs from the EC’s annual Progress Reports and any Strategy Papers local authorities produce. The two instruments take a lot of time, however, and are both at a very generic level with no real priorities or performance indicators driving allocations.
- The MIPD has changed structure several times: 2007-2009 used the three Copenhagen criteria, 2009-2011 moved to an expanded understanding of the criteria and 2011-2013 used a sector strategic planning framework. While the accession criteria are the same, changes to the way funding is conceived and allocated makes longer-term programming problematic though the move to a sector strategic planning approach based on a wide national consultation process in principle is positive.
- The MIPDs do not have clear performance criteria in terms of what the programme should focus on for what reasons (resource allocation criteria) or in terms of what are desired or expected achievements (results criteria, target values).
- While MIPDs provide a three-year funding horizon, the National Programmes (NPs) only allocate financing for one year. Three themes run through Table 2.1: capacity building and training for judiciary sector staff; infrastructural support for the courts system (CSN, ICT), and support to various aspects of anti-corruption efforts in BiH. The inter-linkages within and between these are not easy to discern, however, for example if infrastructure improvements are being linked to capacity development.
- Links between MIPDs and NPs are clear: all projects selected are within MIPD objectives. The actual prioritisations in the NPs are not obvious, though, as there is no justification for the choice of projects and their particular focus as against possible alternatives.
- The NPs faced serious delays and problems, so the 2008 programme was planned in two parts so that faster-moving components could be agreed to first. This in the end did not make much difference as the problem has often been on the BiH side: getting the national actors to agree on priorities, the shares of resources to go across jurisdictions, etc.

Regarding “**lessons learned**” for future programming, the points above and key documents (MIPD 2011-2013; various National Programme documents with “lessons learned” sections; Picard and Kacapor 2010) lead to the following as the most important:

- Programming long-term change like judicial reform requires predictable, stable planning parameters and financing, so programming instruments and cycles need to support this.
- Programming in a contentious field like judicial reform should be based on an inclusive programming process to ensure the broadest ownership and agreement possible, and this requires time.

- National parameters for such longer-term programming should be in place: public financing, legal/regulatory frameworks, and institutional structure. To the extent any of these are missing, they should be among the top issues on the reform agenda.
- The **Intervention logic/relevance** of the activities funded are in line with the overarching concerns expressed in the EC programming documents, builds on the fundamental reforms carried out during the CARDS period, but due to the political fragmentation of the sector has not succeeded in addressing the need for harmonisation and coordination of judicial action, and is therefore rated **Satisfactory**.
- **Efficiency** of the selection of interventions has been problematic since MIPD objectives have moved while NPs could only programme one year at a time, so Efficiency would be considered **Moderately Unsatisfactory**.

2. Judicial Reform

The structure of the judiciary reflects that of the country, with courts at municipal, cantonal (FBiH), district (RS), Entity and State levels, Brčko district having a separate court system. At State level there a state court handles legal issues at State level while the *Constitutional* court addresses issues regarding competencies of the various levels of public administration but is not a traditional *Supreme* court that would have formal jurisdiction over Entity courts. There is hence not an apex court in BiH that can adjudicate discrepancies in interpretation of law or differences in practices in sentencing. There are hence four jurisdictions: Brčko district, the two Entities, and the State, with three different bar exams, an incoherent system of laws, and directives issued by 14 ministers of justice (Progress Report 2007). The country lacks a single Criminal Code and Criminal Procedures Code. The change from an inquisitorial system based on civil law traditions to an accusatorial (adversarial) system more frequent in common law traditions is causing major transitional costs. The understanding and application of the new approaches but also changes required along dimensions such as better collaboration between police and prosecutors are taking time to get in place.

Court administration matters largely fall within the purview of the HJPC, which is seen as a modern and efficient body. But the court system faced a huge backlog of about 2 million cases at the time of IPA funding being programmed in 2006, most of these linked to unpaid utility bills, and the situation was nearly the same five years later, though the electronic Case Management System (CMS) is providing better tools for addressing this issue. The introduction of a bailiff system to handle small-scale financial claims outside the court system has begun addressing this.

The two Entities' Judicial and Prosecutorial Training Centres (JPTCs) are the key institutions for professional education. A medium-term training strategy was developed, though the JPTCs suffer from lack of permanent staff, are dependent on contracting short-term instructors, do not receive sufficient funding from their own public sector budgets, and are often asked to take on *ad hoc* trainings proposed by donors rather than having a system based on carefully identified demands from the judges and prosecutors themselves (interviews).

The prosecution of war crimes has become the top priority for the judiciary, with a National War Crimes Strategy adopted in December 2008. The War Crimes Chamber of the Court of BiH and the Special Department for War Crimes of the Prosecutor's Office of BiH are seen as efficient bodies. Resources are being put into constructing appropriate court rooms, legal staff and judges being

trained and investigative resources being focused on the 500 or so cases that are considered active. While a number of cases have been taken to court at State level, and with accelerating attention to the problem as of 2007, the issue is not given sufficient attention by political leadership in the two Entities, and cases are not being prosecuted with the energy the EU believes is required.

The final conclusion is that “*the development of an impartial, independent, effective and accountable judiciary in line with European standards remains at an early stage.... 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 remain causes for serious concern*” (EC, BiH Progress Report 2011, p. 13).

2.1 Assistance Provided

Table E.3 presents the projects funded from IPA 2007 to 2011 directly related to judicial reform:

Table E.3: IPA projects addressing judicial reform

IPA	Project title	EC €	Description
2007	Strategy planning, aid coordination and European integration capacities in the Ministry of Justice of BiH	1,300,000	Assist State, Entity ministries to produce JSRS, coordinate external aid in support of JSRS, and in implementation of SAA and justice sector <i>acquis</i> for EU accession. This capacity building was to run for 18 months. 11 Outputs were defined, tasks expected to be carried out under the service contract specified, and “ <i>activities will have to stretch over several years in order to ensure an effective reform within and between the Ministries of Justice....the political nature of certain reforms might prevent certain results to be achieved</i> ”
2007	Establishment of a Case Management System (CMS) for courts and prosecutors	836,000	Make work processes in courts, prosecutors’ offices simpler, more efficient with ICT-based CSM. This builds on work on-going since 2004, with successes documented in courts with CSM ICT. Three outputs with indicators are defined – funding is through HJPC.
2008	State court and prosecutor’s office, focused on war crimes and organised crime	3,000,000	Build sustainable professional and technical capacities for investigating, prosecuting war crimes, economic crime, organised crime and corruption. A number of general (non-quantified) Outputs are listed, with considerable description of components, challenges and some on expected changes. There is conditionality regarding local financing/budgeting being in place.
2008	ICT equipment for courts and prosecutors’ offices	1,400,000	A supply contract through the HJPC for ICT equipment to courts and prosecutors’ offices for improving court efficiency and transparency
2009	Continued support to courts and prosecutors’ offices	4,000,000	The purpose was to strengthen capacities of courts and prosecutors’ offices to process war crimes at Cantonal and District courts, and continued ICT investments for better CMS. Ten monitorable results are defined with realistic indicators for tracking performance.
2010	Strengthening of the technical and professional capacities of the judiciary	4,000,000	The major component is large-scale capacity development through PCTCs and other training bodies, primarily of sector professionals but also support staff, to ensure a well-functioning system. The other part is further strengthening of ICT/CMS including human resources management component. A total of 8 results are foreseen, indicators exist for all of them.

2011	Justice sector reform	4,000,000	This is to continue the upgrade of ICT in the judiciary and is a straight supply contract (there is a second component on prison reform at € 1.2 million that is not looked at here)
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The project fiches contain log-frames for all the projects, with the outputs and even indicators largely at a level where it would be possible to monitor progress. The longer-term Outcomes are consistent and logically linked with the overarching sector policies and MIPDs. There are a number of observations throughout the fiches that point to the need for political commitment, guaranteed and continued financing from the public purse, the problems of the political-administrative fragmentation, and thus the high hurdles to overcome to produce results, and a recognition that BiH is failing along all of these dimensions compared with what is needed and promised.

2.2 Results Achieved

The CMS/ICT components are seen as the most successful ones, and training/capacity development also gets acceptable marks, though the training institutions in terms of permanent capacity remain weak.

What is missing is application (real implementation) of some of the upgraded capacities, and in particular the cross-boundary collaboration required for an efficient and effective functioning of a modern judiciary across the country. Furthermore, the 2009 audit by the European Court of Auditors noted the lack of funding for operations and maintenance of the acquired infrastructure, so there was a danger that the improvements in fields that politically were not controversial and where the courts system was performing better, might face problems further ahead.

The ROM reporting given below goes as far back as 2003, with very little reporting on the IPA funded activities. Support to HJPC was tracked over the years 2005-2007, with ratings *falling* over time, to a large extent because objectives have become more ambitious in particular as the ICT systems grew and covered a larger section of the judiciary system.

The support to the prosecutors' offices during the CARDS period received a bland "straight B's" report card, in large part because much of the projects had to do with building internal capacities and systems and not so much with how this capacity would be tracked to Outcome levels.

The support to the War Crimes chamber (2006) and later to the Registry for the War Crimes Chamber and the section dealing with organised and economic crimes and corruption (2008-2012) began with extremely poor ratings as the project came off to a poor start, but later has provided fairly solid performance though the sustainability is weak due to lack of predictable local funding. This is in part due to the considerable resources that the war crimes cases are expected to require.

Finally the support to the BiH judiciary received the most positive ratings of all the projects, largely because the support to the ICT/CMS systems is expected to improve overall efficiency and effectiveness of the court system, thus attracting support and increasing likelihood of expected impact and institutional and financial sustainability.

Table E.4: ROM reports on judicial reform-relevant projects

Project title	Date	RQD	EID	ED	ID	PS
Support to HJPC	2005-02	B	B	B	A	B

Support to HJPC	2006-02	B	B	B	B	B
Support to HJPC	2007-02	B	B	C	B	C
Support to Prosecutors' offices, BiH	2003-11	B	B	B	B	B
Support to Prosecutors' offices, BiH	2004-09	B	B	B	B	B
Support to War Crimes Chamber	2006-05	D	C	C	C	B
Support to War Crimes Chamber	2006-12	B	B	B	B	C
Registry for War Crimes and organised and economic crimes and corruption	2008-12	A	B	A	B	C
Registry for War Crimes and organised and economic crimes and corruption	2011-05	A	B	B	B	C
Registry for War Crimes and organised and economic crimes and corruption	2012-02	A	B	B	B	C
Support to BiH judiciary	2011-10	B	A	B	A	A

Ratings categories: "RQD": relevance and quality of design; "EID": efficiency of implementation to date; "ED": effectiveness to date; "ID": impact to date; "PS": potential sustainability. **NOTE:** Some ROM reports that took place between the ones listed – some projects were monitored every six months – have not been included.

The ROM reports are the only external performance reporting provided, and does not add much insight in terms of real performance regarding judicial reforms. Furthermore, while some of the ROM monitoring has looked at core activities that the EC has supported over time, the monitoring is based on fairly short-term visits while the (short-term) projects are running so that it becomes difficult to identify longer-term results and seeing the projects in light of systemic change.

2.3 Findings and Conclusions

One consistent finding in the ROM reports is the concern of lack of predictable funding by national authorities, at State and Entity levels. The gap between the needs for further judicial reform and lack of financial resources is part of a more fundamental funding problem: dividing a small country into four different jurisdictions with 14 ministries of justice makes the cost of the judiciary disproportionately high. This structural feature of the public sector is hampering BiH development across the board, but means that sustainable judicial reform may be longer in the making than is currently foreseen.

- A key challenge for continued judicial reform is the lack of sufficient and predictable budgetary resources for the legal system
- The increasing attention to the war crimes cases means that scarce human and financial resources are being focused in this area, evidently reducing available resources for other fields of criminal investigation and prosecution.
- The ROM reporting appears too *ad hoc* and narrowly focused to provide much assistance to corrective action in the larger field of judicial reform, yet is the best external real-time monitoring of activities in the sector.
- **Impact and Sustainability** is largely held back by lack of predictable public funding, though the improvements in court case processing due to better and more wide-spread ICT-based systems

are expected to continue and provide better legal Outcomes across many of the basic legal fields, so results achieved overall are rated **Satisfactory**.

3. Fight Against Organised Crime

Organised crime activities in BiH centre on trafficking drugs and human beings and financial crime including money laundering. BiH has not yet signed the Council of Europe's Convention on the validity of criminal judgments, a key tool in fighting cross-border crime, and its witness protection is inadequate. A memorandum of understanding between the central law enforcement bodies across BiH, including the State Investigation and Protection Agency (SIPA) and the Indirect Taxation Authority (ITA), key bodies at State level, on the establishment of an international law enforcement coordination unit is not being implemented.

BiH has established a Financial Intelligence Department (FID) within SIPA. While BiH does not have a specific law on illegally acquired property, some of the issues are addressed in its regular criminal legislation. The lack of clear legislation is hampering anti-money laundering enforcement, and in 2010 only two out of 215 reports on money laundering were transmitted to the prosecutor's office. Seizure of criminally gained assets remain low, and shortcomings identified by MONEYVAL's reporting have largely not been addressed.

BiH signed the Council of Europe's Convention on Action against Trafficking in Human Beings on 19 January 2006 with ratification on 11 January 2008 and entry into force on 1 May 2008. Action plans addressing trafficking in human beings have been passed but only partially implemented, though this is one field where some progress has been made. Most of the interventions are donor funded, however, so are largely not sustainable.

BiH signed (12 December 2000) and later ratified (24 April 2002) the UN Convention against Transnational Organized Crime and the supplementing Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. With respect to the fight against drugs, BiH has established improvements in the collaboration with neighbouring countries and has strengthened its international reporting somewhat. But lack of coherence across jurisdictions remains a problem: RS is for example not linked in with the national database on drug-offenders. Coordination among the various police forces is poor, and performance uneven.

The latest Progress Report notes that BiH is at an early stage of its fight against organised crime, human trafficking, drug trafficking, money laundering and seizure of illegally acquired assets (Progress Report 2011). The Commission's latest report to the European Parliament and Council is highly critical, stating that "*Little progress has been made in the fight against money laundering. The implementation of the strategy and action plan for the prevention of money laundering remains limited. There has been little progress in the fight against drugs. The absence of effective judicial follow-up impedes the fight against drug trafficking, which remains a serious problem.....The fight against organised crime remains insufficient due to the lack of effective coordination between law enforcement agencies. Organised crime remains a serious concern that affects the rule of law and the business environment. Efforts to fight trafficking in human beings need to be intensified and deficiencies in identification of victims of trafficking addressed*" (CMO(2011)666, annex 2, p. 64).

3.1 Assistance Provided

Two IPA projects have focused on addressing the problem of organised crime in BiH. The first one provided training for staff of the Financial Intelligence Department of SIPA and of other financial regulatory agencies and institutions. This was largely about tackling the problem of money laundering and ensuring coherent knowledge and skills across the various bodies that need to be tracking this problem. One concern that the project was to address was to ensure that not only banks but also other bodies that deal with cross-border financial flows – foreign exchange houses, various kinds of insurance bodies, export-import firms and so on – are also being monitored and reported on according to international standards. The project was thus as much about building the national network as it was about providing individual skills.

The project in 2008 funded support to State court and prosecutor’s office, among other things to build capacities to investigate and prosecute economic and organised crime and corruption.

The other projects that deal with justice sector reform and capacity building normally include aspects of combating organised crime. The establishment of the CSM throughout the courts system allows the courts to better prioritise important cases such as trafficking in human beings. The prosecutors’ offices are the ones that are to take all serious crimes to court and thus the continued support in this field also will contribute to the fight against organised crime – though the project log-frames do not include such dimensions among their Outputs.

Table E.5: IPA projects addressing organised crime

NP	Project title	EC €	Description
2007	Training SIPA’s FID, financial regulatory agencies	400,000	Train staff of relevant offices in investigating money laundering, improve the cooperation with prosecutors and regulatory agencies in these fields. Two outputs with indicators defined.
2008	State court and prosecutor’s office, focused on war crimes and organised crime	3 million	The project was to build sustainable professional and technical capacities for investigating and prosecuting cases related to war crimes, economic crime, organised crime and corruption.

3.2 Results Achieved

As has been noted above, the fight against organised crime does not have great successes to show to in BiH. The 2007 training program was seen as successful by participants met, partly because of the technical training, partly because of the “gateways” to the larger EU body of knowledge and networks that the project contributed to, but perhaps most of all because of the building of relationships between national actors. This provided understanding of who the other actors are, what their roles in the larger picture are, how they try to address their mandates and how the different actors can support each other in achieving the larger objectives. It helped establish the personal links and trust that are important for efficient and effective crime fighting, but seems to have been largely restricted to agencies at State level.

With regards to ROM reports relevant to the field of combating organised crime, the only ones are for projects funded under the CARDS program, as shown in table E.6 below. The key project was one that supported prosecutors’ offices throughout BiH where one purpose was to provide IT equipment for CMS, another was to improve management of staff and financial resources, and the last was to process cases, “*in particular related to financial crime*”. Because of its strategic

importance the project was subject to fairly intensive monitoring, but as can be seen was given the exact same rating on all five dimensions each time – a “B”. In light of subsequent developments, the ratings on expected impact and sustainability may have been optimistic.

Table E.6: ROM reports on organised crime-relevant projects

Project title	Date	RQD	EID	ED	ID	PS
Support to Prosecutors’ offices, BiH	2003-11	B	B	B	B	B
Police project	2004	B	B	C	B	C
Support to Prosecutors’ offices, BiH	2004-11	B	B	B	B	B
Support to BiH police forces	2007	B	C	C	B	C

Ratings categories: “RQD”: relevance and quality of design; “EID”: efficiency of implementation to date; “ED”: effectiveness to date; “ID”: impact to date; “PS”: potential sustainability. **NOTE:** Some ROM reports that took place between the ones listed – some projects were monitored every six months – have not been included.

The support to the police forces included a component addressing organised crime, but due to the lack of progress on integrating and coordinating the various police forces across BiH, impact and likely sustainability of results even at the time the projects were monitored – in 2004 and 2007 – were not seen as very promising.

3.3 Findings and Conclusions

The fight against organised crime and its various sub-components – money laundering, drug trafficking, trafficking in human beings – is seen as important and constituting a serious challenge in terms of cross-border criminality for BiH. IPA funding has not focused much on this issue directly, and there are no real targets or objectives set in this area. The issue is rather addressed as part of the larger challenge of strengthening the investigative, prosecutorial and sentencing capabilities of the various parts of the BiH legal system – and even more to ensure coherence, collaboration and consistency across the various jurisdictions when it comes to organised crime.

- The main challenge for improving performance in this area is not weak technical skills and limited resources, but the lack of cooperation between and among different bodies across jurisdictions, and behind that the lack of a clear interest by the various political leaderships in taking on this issue.
- Apart from this overarching weakness, however, a better specified action plan to address organised crime would allow for better tracking of what is being done and could help identify where most likely areas of future success might be found, but would need to be seen and done in a long-term perspective, not short-term interventions.
- **Impact and Sustainability** in the fight against organised crime must so far be seen as quite disappointing, with an overall rating of **Unsatisfactory**.

4. Fight Against Corruption

BiH signed the UN Convention on Fighting Corruption on 16 September 2005 and ratified it on 26 October 2006, though the Additional Protocol to the Council of Europe Criminal Law Convention is pending. BiH has not signed the OECD Convention on Combating Bribery of Foreign Public Officials

in International Business Transactions. BiH lags badly regarding implementation of recommendations made by the Group of States against Corruption (GRECO).

A first National Anti-Corruption Strategy and action plan was adopted in 2006 but with poor implementation. A new Strategy with an attendant action plan was passed for the period 2009-2014, and a law establishing the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption was passed in December 2009 (ACA). The Agency had till mid-2012 received little funding with only the director and two assistant directors in place with no own facilities or support, though in June 2012 its rulebook was finally approved and recruitment of new staff begun.

Box E.2: BiH Anti-corruption Agency and its Strategy 2009-2014

The legislation that established the Anti-corruption Agency (ACA) was a landmark for two reasons: (i) it recognized corruption as an explicit issue and problem for BiH to address, (ii) the ACA was established as one of few pan-national bodies that is accepted by all jurisdictions. The ACA does not have prosecutorial powers, however, but is primarily a coordinating, preventative and informational body as the main strategy is to try to *reduce* the levels of corruption. It reports to the parliament on what is being done at the various levels of public sector anti-corruption work.

The anti-corruption strategy itself is a very different document from the JSRS (box E.1). It does not document the process behind it, has little of the participatory ownership to it, does not contain real performance indicators nor identify which agency is responsible for delivering results on which parts of the strategy, nor any financial resources identified for implementing tasks, either for the ACA itself or in the ministries or agencies that ought to be responsible for various deliverables.

The strategy contains five components, each with short-term (end of 2010), medium-term (end of 2012) and long-term (end of 2014) goals: (i) build the anti-corruption agency, (ii) corruption prevention, (iii) education, training and public awareness, (iv) law implementation, (v) coordination and implementation of the strategy. A sixth element, on international cooperation, is largely to verify compliance with international legislation.

While many observers believe the objectives identified are relevant ones, it is unrealistic in terms of time horizons and results to be delivered. One short-term goal for law implementation is “*increase the efficiency of all law enforcement agencies by adequate funding, equipping and training*”, for example. Given the BiH financial situation and political commitment, this rather simple deliverable is rather an optimistic long-term target.

Several pieces of anti-corruption legislation are in fact in place, such as the Law of Financing of Political Parties. The Central Election Commission has used the recently passed Law on Conflicts of Interest to prevent some candidates from running for public office, but while elected officials at State and Entity level are obliged to provide information, there is no effective monitoring of declarations of assets, or sanctioning. The ability of non-state actors to monitor and pursue cases of corruption are hindered by weak legislation – the Freedom of Access to Information Act is deemed inadequate in the field of anti-corruption – but also by direct threats made to the individuals and organisations involved. Nonetheless, actors such as Transparency International provide periodic reporting, largely with donor support, but there have so far been no successful prosecution and sentencing in high-level cases of corruption. Where such cases have been won in lower-level courts, the sentencing has generally been overturned in higher-level courts, at times on formal grounds (such as claims that lower-level courts do not have the competency to try such complex cases). The 2009 Progress Report notes that corruption remains endemic, especially in the public sector, and affects public procurement, business licensing, health, energy, education and transportation infrastructure sectors (Progress Report 2009 p. 15).

Overall, BiH “has made very limited progress in tackling corruption, which remains widespread throughout the public and private sector. The legal framework for fighting corruption is largely in place. However, implementation of existing legislation is insufficient.” (EC, Progress Report 2011, p. 14). This is repeated in the Commission’s report to the European Parliament and Council which goes on to note that: “Implementation of the anti-corruption strategy and plan remains weak” (CMO(2011)666 final, annex 2, p. 59).

4.1 Assistance Provided

Table E.6 presents the IPA-funded projects 2007-2011 directly related to fighting corruption. The two last ones provide support to the ACA and its work, yet the agency remains without capacities to carry out its mandate.

Table E.6: IPA projects addressing corruption:

IPA	Project title	EC €	Description
2008	Support to civil society in BiH	500,000	Within a larger program of € 3.5 million to improve partnership and dialogue between government and civil society, funding for a call for proposals from CSOs active in the fight against corruption was included. There were no specific Outputs foreseen (depended on actual proposals received), with Outputs generic to relations between public and non-public actors regarding strengthening of democracy
2009	Support to the anti-corruption agency (ACA)	500,000	The purpose was to strengthen institutional and administrative capacities of ACA and other bodies mandated to fight corruption at different administrative levels, and reinforce preventive capacities of public actors and law enforcement agencies. Three Outputs related to the above are listed, some indicators are verifiable, others are more process. A training project with one contract.
2010	Implementation of the anti-corruption strategy and action plan	2,000,000	The purpose was to implement the anti-corruption strategy and action plan in collaboration with civil society and business, improve the “ethic infrastructure” in the public sector and business through training. Six results are defined with a considerable number of quite specific (and ambitious) indicators listed.

The large-scale support to law enforcement with EUR 8 million has a major component addressing corruption. The support to CSOs engaged in anti-corruption work was partly meant to mobilize civil society for a more coherent effort to address corruption issues. The Delegation felt that the results from this attempt were not as expected, in part because BiH CSOs remain weak. One problem that CSOs raise, however, is that it is very costly for small organisations to compete for EC funds: the process takes too long, the requirements are too strict – especially regarding mobilisation of own funding – so it is generally easier to look for funding from other sources. At the same time, CSOs recognize that the EC is the largest funding actor and is the one that will in fact stay the course and potentially with the clout to actually address the problem. So there is frustration – on both sides, evidently – that not more collaboration has been possible till now.

4.2 Results Achieved

There is little in terms of specific results that can be recorded related to EC funding. There are no ROM reports on the projects, and the performance of the ACA so far has been extremely limited.

What little direct reporting available to the public there is on corruption is largely generated by CSOs (see box E.3).

4.3 Findings and Conclusions

While the fight against corruption is an important issue for the EC, there are so far no documentable results to point to.

- Because corruption is so pervasive and touches on core interests of important parts of the political elite, any programming of serious anti-corruption work is going to have to be based on the mobilization of a broad range of stakeholders who may have somewhat different interests in the issue. This will require time, resources and considerable political clout to succeed.
- **Impact and Sustainability** in the fight against corruption is **Highly Unsatisfactory**.

5. Looking Ahead

When looking ahead regarding how EC resources for Rule of Law can be better programmed, the team has relied on various sources of information, as provided below.

5.1 Relevant Studies and Evaluations

There are two studies that look at the impact of EC support to governance and rule of law in BiH that are presented below. There do not seem to be other independent assessments of donor support in this field, which is surprising given the concern that actors have voiced regarding RoL problems in BiH and the political attention this topic seems to have generated among many actors. There are studies that look at these issues for the region as a whole, but most of these do not contain data on BiH specifically. The two studies reviewed here are:

- An *ad hoc* evaluation of the EU CARDS programme 2001-2006 (Rambøll Management 2008)
- Interim/strategic evaluation of EU IPA pre-accession assistance to Bosnia and Herzegovina (Picard and Kacapor 2010).

5.1.1 Ad Hoc Evaluation of the CARDS Programme

The *ad hoc* study, published in December 2008, looked at what the study termed three sectors: Democratic Stabilisation, Good Governance, and Economic and Social Development. The study covered the full six years of the CARDS 2001-2006 period, assessing performance against the five standard DAC criteria of Efficiency, Effectiveness, Relevance, Impact and Sustainability. In all, 55 projects were looked at, which represented about one-third of the CARDS portfolio. These projects had expenditures totalling around € 109 million, of which almost exactly half were projects in the Good Governance sector.

The Good Governance cluster included four projects on Judicial Reform and one on Police capacity building. The total spent on judicial reform was nearly € 9 million, while a little over € 6 million was spent on equipment for the police, so this was a pure supply project and not addressed further.

Table E.7: Judicial Reform and Police Capacity Building projects, CARDS 2001-2006

Year and Project title	Type	Expenditures, € million
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2002: Support to HJPC	Service	3,499
2003: Support to judicial reform	Service/ Supply	1,869
2005: Support to HJPC	Grant	2,500
2006: Support to HJPC	Grant	0.983
2003: Police capacity building	Supply	6,093

Source: Rambøll 2008, Annex 1, Contractual and Financial Data, p. 45.

The four projects for judicial reform were centred on the Independent Judicial Council (IJC) which later was legislated into BiH's High Judicial and Prosecutorial Council (HJPC). The projects provided financing of salaries and other expenses and the procurement of computer equipment. This was a continuation of a process of streamlining and computerising the judiciary started in 1999 by the Office of the High Representative (OHR).

Relevance: The projects were based on establishing the conditions for an independent, effective and efficient judiciary, building on the initiatives of the OHR and complemented by projects funded by other donors, including USAID and DFID. However, HJPC is primarily a State-level institution, and over time the support from the Entities decreased with RS beginning to challenge its mandate and legitimacy. While therefore relevant to agreed political objectives, the projects lacked both sufficient political support from the Entities, so in the end Relevance was rated **Satisfactory**.

Efficiency. Because the HJPC was an independent body, it was able to procure its own services and equipment using national procurement rules. A competent project team ensured efficient and appropriate procurement both of staff/consultants – most of whom were local and thus quite cost-efficient – and services and equipment. A case management system completed earlier work by USAID, and investment in court facilities has addressed immediate needs in ensuring the functioning of the legal process. A general finding of the evaluation was that State level institution building was most successful in areas closely overseen by the OHR, which included the HJPC in its early stages. The evaluation also noted that the Delegation was responsive to difficulties facing projects like the HJPC and adjusted project scope to the prevailing political conditions. The projects were rated **Highly Satisfactory** with regards to *Efficiency*.

Effectiveness. The judicial reform projects have been effective. ICT infrastructure was established and staff trained in its use. A judicial network system connects all courts and prosecutors' offices under a MoU with the HJPC. The minor offense courts was merged with municipal courts, the number of judges reduced by half while training programmes have been produced and delivered by the entity JPTCs, though both remain weak as they are under-funded. A number of court buildings were renovated. The HJPC effectively oversees the sector by appointing judges, in principle on objective criteria free from interference of the executive and legislative authorities in both entities. *Effectiveness* was rated as **Satisfactory**.

Impact was achieved in the fields of the restructuring of the minor offense courts, renovated court premises and a functioning computerised CMS. The gains are vulnerable to limited funding, but the assistance has allowed the transfer of war crime cases from the International Criminal Tribunal for the former Yugoslavia (ICTY) to the BiH courts system, a testimony to its new-won status and

competence. A strategy for the development of the justice sector had been financed by DFID and was to be used for future EU support. *Impact* was thus rated as **Satisfactory**.

Sustainability. The evaluation notes that the HJPC is funded from the state budget but relies primarily on donor funding. However, significant improvements in efficiency were foreseen in staff costs, which would release funds that could be used for the overall judiciary system. Based on this line of reasoning, *Sustainability* was seen as **Satisfactory**.

The evaluation rates the support to judicial reform as above the average for the Good Governance interventions as a whole, as seen in table E.8. A key reason for this is that the support has gone through the HJPC. This is an institution at the State level that mimics similar institutions in other countries since it actually has pan-territorial remit. At the same time it is not caught in the tri-partite power-sharing arrangements inside its own administration to the same extent as other state bodies.

Table E.8: Good Governance vs. Judicial Reform Performance Ratings

	Relevance	Efficiency	Effectiveness	Impact	Sustainability
Good Governance	Satisfactory	Moderately Satisfactory	Moderately Satisfactory	Moderately Satisfactory	Moderately Unsatisfactory
Support to HJPC	Satisfactory	Highly Satisfactory	Satisfactory	Satisfactory	Satisfactory

Source: Rambøll 2008, p. li and running text

The HJPC has been receiving strong, continued and highly visible political support from the international community – the OHR, the EC, the World Bank, and important bilaterals like the US and the UK. There has therefore been a politically important “protective shield” around the HJPC.

The HJPC has also received continuous, long-term and high-level technical assistance in the form of international judges and prosecutors. This assistance began with the setting up of the IJC, which was largely run as an internationally-managed body till the HJPC was established based on a cross-territorial political agreement – one of the few examples of Entities handing over some of their authority to a State-level institution. International judges and prosecutors were therefore essential in putting in place a “corporate culture” that is in conformity with European standards and ethics, and have helped shape both the institution’s own understanding of mandate, role and practices, but also has been able to “cascade” this down to the lower-level courts systems – to varying degrees: some informants at Entity level were clear on what they perceive to be their independence of the HJPC in a number of fields, and also their feeling of being left behind by the donor community – that all the support has gone through the HJPC and thus has been filtered through HJPC lenses rather than based on a careful analysis and understanding of real needs of courts systems at Entity and Cantonal levels. They believe that if this continues, the reform process is likely to suffer, in part because the political and administrative support locally obviously will weaken and implementation will suffer, but also for more formal reasons: the budget systems and actual legal practices and even laws differ so that “one size fits all” will not be possible. Funds meant to support the legal system in a given Entity has to be channelled through Entity channels in order to reach its destination, and reform measures have to be based on the legal foundations in existence there.

EC support has thus on the one hand been part of a much larger effort, and on the other has not really critically assessed the larger court system picture: assessments are based on how results

appear as seen from the vantage point of the HJPC, an apex institution. This raises two sets of questions for this evaluation.

The first one is attribution: since the EC support is so clearly partnered with important efforts of other actors, and in particular is part of a large political push by the international community, it becomes difficult to assess EC funding along the dimensions such as Effectiveness and Sustainability since it is not possible to state if results are because of or despite the way the EC has provided its funding.

The other is a more political assessment. The EC clearly would like to see the political system and administrative structures of BiH evolve towards a more standard State organisation so that the EC has one decision-making level to deal with when negotiating EC accession. When Entity actors – training centres, ministries and others – complain that judicial reform channelled through the HJPC is not really working, some may claim that this is not necessarily an issue if what the EC would like to see evolve is one coherent system centred on a strong, efficient and effective apex HJPC. The problem with this point of view is obviously its lack of realism as long as BiH has not decided on fundamental constitutional reforms that removes the semi-autonomy of the Entities in favour of a more traditional centralised unitary state – and right now that is nowhere on the horizon.

One general observation that the evaluation makes is that project design was poor, but that “*this vagueness in project design has however provided important flexibility in an environment of rapid change, limited information and difficult co-ordination*” (Picard and Kacapor 2010, p. i). That is, in a situation of lack of stable and predictable parameters for project execution, flexibility that came from a poorly (vaguely) designed project was an advantage. The conclusion from this is clearly not that the EC should promote poor project design (!) but the point of building in flexibility in a rapidly changing – and somewhat unpredictable – policy environment is worthwhile bearing in mind.

- Support to HJPC has been long-term and consistent, and thus has contributed to institutional solidity and the development of a positive “corporate culture”.
- High-quality technical staff – senior judges, prosecutors, administrators – have been important for the organisational development: they have introduced good international practices and knowledge, and due to their longer-term stay and seniority have been accorded respect and listened to, while also providing practical hands-on suggestions for how to address difficult organisational issues.
- There have been spread-effects (spill-over, positive externalities) from the HJPC organisational development to other parts of the judiciary – formally through the process of improving selection and monitoring of judges and prosecutors, but perhaps equally through the “leading by doing” that actual performance of roles provided.
- The limits to these spread effects are clear when other – even subordinate – institutions do not recognize the legitimacy of the apex institution.
- Furthermore, many important stakeholders in the judiciary sector across the country were not party to the programming/planning of the support to the judiciary sector through the HJPC and thus have little ownership in the program at all.

5.1.2 Interim/Strategic Evaluation of EU IPA Pre-Accession Assistance to BiH

The Interim/Strategic Evaluation had two specific objectives: (i) provide “an assessment of the intervention logic of the IPA assistance, including the extent to which assistance is/should be programmed through a sector based approach” and (ii) provide “a judgment on the performance of the provided assistance particularly as regards its relevance, efficiency, effectiveness, impact and sustainability ... [of] the assistance deployed under 2007-2009 IPA National Programmes” (Picard and Kacapor 2010, p. 7).

The report does not address the judiciary sector/Rule of Law to any particular extent but is looking more generally at IPA support. It does discuss the selection of the justice sector as the one that was chosen as pilot for sectoral programming and support, noting the factors that led to this and concluding that with the JSRS BiH in fact did appear to have a solid foundation for judiciary sector support in place. The report (from November 2010) was then too early in the process to assess actual performance.

It notes that the EC took a number of steps during the first half of the programming cycle to improve efficiency: the number of projects was reduced; the programming cycle was made shorter; but the programming remained slow and cumbersome with the MIFF ⇒ MIDP ⇒ National Programme ⇒ project identification process. Furthermore contracting was a slow process at the beginning of the cycle though was beginning to accelerate at the time of the review. It noted, in line with all other studies, that the lack of horizontal and vertical coordination across BiH made for very complicated and slow implementation, with reduced impact and sustainability one result.

It notes the vagueness of MIFF and MIPD objectives, and that SMART indicators only can be found at the level of project fiches and improving over time: the 2007 project fiches were in general considered weak. It points to the need for more ex-post monitoring of results as well as more structured facilitation of ‘lessons learned’ from success stories to other projects.

Regarding the second part of the evaluation – to review EC assistance according to the five DAC criteria used for the CARDS evaluation – this does not yield much useful information since it does not break down the analysis by sectors and thus provides only very generic recommendations.

5.2 IPA Assistance: Lessons Learned

When reviewing the views of informants regarding how IPA funds could be programmed, these can be grouped into four categories: general framework conditions for programming in BiH, and then three dimensions of the activity cycle: the programming of the activities; the implementation; and how results are monitored, reported and used.

5.2.1 General Framework Conditions for Programming Rule of Law Assistance

State capture of judiciary an increasing threat. Several informants claim there are increasing attempts at political interference with the judiciary at Entity and State levels, to influence selection and appointment of judges, and limit the cases and possible punishment in cases that touch on political actors and their interests. To the extent that this is correct, it will undermine improvements in formal frameworks and laws and weaken the effects of the Rule of Law support by the EC.

- The intersections between politics and the legal system need to be transparent so that the fundamental concept of separation of powers is not violated.

High tolerance for corruption. A number of informants noted what they believe is a high tolerance for corruption among the population for a number of reasons: its prevalence in the everyday lives of most people; the perception that top politicians are involved in corruption; most media not interested in covering corruption; few success cases pursuing corruption among the powerful and wealthy; general fatigue coming from a difficult economic situation for most. There is thus little enthusiasm and hope that fighting corruption, organised crime and other failings of the legal system will lead to any practical improvements in the daily situation of most.

- The EC may look into a diagnostic study that identifies which levers of change are the most likely to generate support from the population for more sustained judicial reform.

'Corporate culture' is a major issue. The tradition from the socialist period of executing orders rather than being an actor that reflects critically around how better to deliver on own responsibilities is a major challenge across the public sector. Another is the formalism: if something is not explicitly legislated or put into a rulebook, it is difficult to implement. This tradition is reinforced by a political establishment today that does not want to be held accountable for poor performance and illegal acts. The judiciary thus more than perhaps other sectors requires a "modern" corporate culture in order to fulfil its proper role. One can see such a shift in the HJPC – partly because it is a new body and thus did not have to go through the process of "shedding" an old, ingrained hierarchy and history, but also because it has benefitted from long-term high-quality hands-on external expertise (international prosecutors and judges). These points to the need for a long-term, comprehensive and consistent support that not only addresses technical issues but also the more fundamental understanding of roles and organisational commitment to performance. The JPTCs in Sarajevo and Banja Luka are critical institutions for addressing this issue.

- Longer-term stable technical assistance/twinning partnerships to develop appropriate "corporate culture" should be a core concern when designing support to judiciary institutions.
- This issue should be a dimension in all training provided at the JPTCs.

'Champions of change' exist but have little voice. There are CSOs that track dimensions of rule of law, and internal control bodies such as the Administrative Inspections and Ombudsman's office that produce important reports but which are generally not acted upon by Parliament. The fact that the ACA is not operational is a powerful negative signal to other actors: they do not have to comply with anti-corruption legislation and principles because the public sector will not prosecute and follow up. CSOs are contracted do help monitor implementation of the JSRS and the Structured Dialogue but do not get sufficient resources to do in-depth tracking and substantive work.

- It is important to empower actors that can play a rights-holder's role vis-à-vis public authority across BiH, to push for compliance of those key laws and frameworks that are in place.
- CSOs that are given monitoring tasks need to be provided the resources to carry these out while ensuring that their independence is respected.
- Particular attention needs to be paid to making the ACA operational and effective because of the signalling effect to society at large and politicians in particular.

Incentives for 'champions of change' are largely negative. People who have identified cases of corruption and organised crime have been physically threatened, judges and prosecutors have little

protection, and protection of whistle-blowers is poor and not properly addressed in legislation. The pressures to increase the productivity of the legal system means nobody wants to prosecute corruption and organised crime because these are very time- and resource-intensive cases and thus hurt possibilities for promotion. There is a high risk of reversal of decisions of such cases in appellate court, in which case the time and effort spent is wasted.

- The problem of negative incentives for key actors should be analysed and possible changes introduced as part of a more holistic program for judicial reform.

5.2.2 Programming Financial Assistance

The HJPC merits particular support. The HJPC has been the main beneficiary of EC support during the last years and has been key to some of most important changes in the sector. But it still requires considerable financial and political support because it is under constant attack and political pressure. Some informants feel the HJPC is increasingly being pressured politically where the entry point is ethnic balancing, since the 15-member council is geographically/ functionally composed.

- The HJPC should be given high-profile political support as well as guaranteed continuous financial support, to ensure commitment to continued excellence and performance.
- Annual in-depth peer reviews should be carried out to ensure independence and quality.

Need to understand totality of transformational challenges and costs. There is a feeling that the international community has been pushing large-scale changes in formal laws and frameworks without completing the task: bylaws and complementary regulations are often missing, changes in roles and responsibilities are not made clear, and staff are not properly trained and thus cannot apply the new laws as intended [Example: juvenile law was replaced in 1998 and then changed once again five years later, neither time with necessary bylaws prepared]. The massive reforms meant that BiH got a new court system, new laws, new judges and prosecutors all at the same time. There is a need to ensure that all these complex changes are fully supported.

- Support to justice sector must be long-term and comprehensive.
- Success criteria must cover entire delivery chain: production of new frameworks, laws, bylaws and regulations; capacities to investigate, prosecute, judge and incarcerate; actual prosecution of priority cases reflecting accountability of system and equality before the law.

Role of war crimes in the overall picture. War crimes are being transferred to the BiH court system, and this is threatening to absorb a disproportionate amount of the sector's resources. Court rooms are being refurbished to handle the specific security requirements; judges, prosecutors and lawyers are being assigned to and trained for such cases; and this massive focus on the war crimes cases is seen by many as a convenient way to walk away from the urgent concerns of corruption and organised crime. While it is recognized that war crimes need to be addressed, there seems to be no analysis of the implications for the larger legal system in terms of capacity utilisation over the next five years.

- The effects of war crimes cases swamping the judiciary system needs to be understood so that a balanced use of scarce legal resources is maintained.

Donor Coordination: There are a number of important international actors involved in addition to the EC, both on the policy and funding sides. The management of this assistance has been variable, where members of the international community have at times worked at cross purposes and with considerable duplication of activity funding. Two factors in particular have led to improved aid coordination and thus enhanced aid effectiveness: (i) the JSRS that puts forward the priorities and how they are to be pursued, and (ii) key institutions, in particular HJPC, that are core actors around which a lot of coordination can be arranged. One point about the JSRS was that the process, which lasted about one year, not only had been very inclusive on the BiH side, but international actors had also been observers both in meetings but also in the working groups that were established for the implementation. The Structured Dialogue on Justice has in some respects replaced (formally only supplements) the process around the JSRS, since JSRS implementation has stalled. The unfortunate consequence of this is that the dialogue on justice sector reform has moved from a national ownership (JSRS) back to a more donor-driven process (Structured Dialogue driven by the EC). But there is still insufficient coordination of the international community in applying political pressure for judicial reform.

- National instruments and processes (JSRS) are most effective for ensuring efficiency and effectiveness of international support.
- Second-best solutions (EC-led Structured Dialogue) should be temporary measures, but when first-best national solutions are missing or dysfunctional (JSRS) it is still better to have such broad-based and open processes and instruments in place.
- The *political* dimension of support to judicial reform is critical and requires better coordination of the international community.

5.2.3 Implementation of Activities

Differentiated Entity challenges slow structural reforms. The RS, as a unified political region, is able to take decisions and implement them expeditiously – but is the actor which most forcefully tries to undermine national coherence with constant challenges to the legality and competency of

institutions like the HJPC to have a say at Entity level. FBiH is politically much easier to deal with, but is dysfunctional in terms of policy development and implementation because the Federation has limited say at Canton level in many areas of law and security. The EC has been struggling with this fragmented sectoral reality for years, and the Structured Dialogue was initiated largely in response to this reality.

- [Frankly no obvious solution to this except continued political pressure and dialogue – which so far has not produced major gains]

Differences in formal legislation and structures across jurisdictions create implementation challenges. This follows from the point above: the fragmentation of national polity makes implementation costs extremely high and performance uneven. The financial incentives of judiciary sector funding are clearly not important enough to overcome sectarian distrust and resistance.

- [Frankly no obvious solution to this except continued political pressure and dialogue – which so far has not produced major gains]

Sectoral approach in the justice sector may actually be moving. A number of informants believed that the new justice sector reform project of € 7 million that started up in May 2012 as a two-year program covering all 21 law enforcement agencies may contribute to building more coherent capacity across BiH. There is also the belief that despite its weaknesses, the JSRS because of its comprehensive participatory programming created important building blocks for a more coherent and comprehensive judicial reform program – it was BiH that selected the judiciary as the sector around which the country's first sector programme should be designed – and that this project may be considered an important result of the JSRS process.

- The 2012 justice sector reform project may be an important stepping stone for further broad-based programming and thus merits particular follow-up and support.

Municipalities may be a good place to implement reforms. Some examples on processes that have moved forwards – business development, reconciliation work, etc. – are locality and municipality based. While there is a need for structural change being imposed from above, there is also space for implementation change from below, because it is easier to mobilize, monitor and support. While there is little “spill-over” effects *upwards* in the system, there can be horizontal learning effects to other localities which generate examples and foundations for further progress. But EC funding is seen as focusing its resources “at the top” and then just cascading down (one informant noting dryly that “here one can really talk about ‘trickle down’ – almost nothing reaches municipal level courts, judges and prosecutors so they are not able to participate in the transformational process of the court system”).

- The EC may wish to map out cases of positive change at local levels as the basis for more systematic support to change processes being initiated from below.

CSOs require capacity development. A number of CSOs are engaged in advocacy and watch dog functions regarding judicial reform, and the EC has helped strengthen their voice by contracting some to monitor JSRS implementation and some are engaged in the Structured Dialogue. Yet civil society is still incipient and will require further capacity development as well as political support. Links to other parts of civil society – knowledge/research centres, labour unions, professional

associations, faith-based organisations – could be supported. The requirements for own funding – normally 5-20% - for CSOs to apply for EC funding is too demanding.

- Procedures, requirements for CSOs to apply for support need to be simplified, streamlined.
- One possible model for future support is a CSO fund managed by an independent body (not itself eligible to apply for funds), to scale up funding, improve capacity development initiatives across actors, standardize and simplify performance monitoring and reporting, and reduce administrative costs to the EC.

Independent media require support. While BiH has a Freedom of Information law which is good, there is virtually no way to enforce it. In a society where formal media – press, radio and TV – are largely owned by business or political interests (a thorough study exists that documents this), alternative media are critical. There is, however, little trust in media due to a general fatigue and cynicism in the population, so the alternative media themselves need to find ways of reaching their target groups with credible messages. There is a fair amount of investigative reporting taking place and being published on various aspects of social life, and there is an active network of investigative journalism – but it still has a relatively weak platform.

- Independent media with real access to information is a critical pillar for judicial reform and accountability. The EC should carry out a diagnostic study that maps out the current situation and alternatives for the future, based upon which it should develop a medium- to long-term strategy for supporting independent and critical media.

Box E.3: Investigative and Independent Reporting

A number of CSOs provide independent reporting on structural issues, such as **Transparency International BiH's** reporting on funding of political parties (a study based on the so-called CRINIS methodology, rating performance along ten dimensions), National Integrity System studies (three have so far been done) and on the implementation of the national anti-corruption strategy (four studies have been completed, the last one so far only in the local language).

The **Centre for Investigative Reporting** (CIN – Izvor) has published a large number of case histories of shady deals, improper management or sale of public assets, dismissal or very light sentencing or early pardoning of politicians and civil servants caught in corrupt practices, etc.

The **Balkans Investigative Reporters Network** (BIRN) carefully documents all war crimes cases, so that the evidentiary basis for judgments are publicly known and disseminated, while the **MediaCenter** both trains in investigative journalism while also publishing and disseminating stories through its networks such as radio stations and social media.

Other bodies that provide independent assessments of the situation and trends include **GRECO**, the Council of Europe's body of states against corruption, which has released evaluations of various dimensions of corruption, the most recent reviewing funding of political parties (2011).

Public procurement major problem. Public procurement is considered a major source of corruption across BiH, tightly controlled by political leaderships both as a source of revenue and political control. This constitutes a major challenge for all EC funded activities in general but for any anti-corruption programme in particular since the incentives to address the problem tend to be negative as far as important local actors are concerned.

- Projects need to have common approach to public procurement that provides incentives for “clean” procurement processes but in particular imposes tough sanctions on identified cases of corruption.

Different parts of the business community have different interests when it comes to combating corruption. Public procurement constitutes a large share of total economic activity. Combined with public permits based on a complex business environment provides the public sector many leverage points for extracting benefits from private companies, which means that those who want to succeed “get ahead by going along”. According to a number of informants, this is a major challenge for the anti-corruption work. The challenge is to identify those businesses that would benefit from a more equal playing field and thus have incentives in seeing corruption and favouritism being addressed. This would include local/small-scale businesses that do not benefit from political patronage; international investors that are not willing to pay bribes; etc.

- The EC needs to partner with other actors in identifying and supporting “champions of change” in a long-term and more consistent manner if the culture of corruption and impunity is going to have any chance of success.

Transaction costs in business law. Some reform measures can be driven if intended beneficiaries are mobilized, represent a broad-enough coalition and see sufficient benefits from change that they are able and willing to overcome inertia and entrenched interests. What is happening in parts of the business sector was held up as a success story. A focus on reducing legal transaction costs through simplification and standardization, moving to electronic and thus real-time information platforms, enhanced transparency and reduced discretionary decision making authority for granting legal permissions at municipal level has been hailed by some in the business community as an important break-through (see box E.4). This was seen as possible due to a focus on a particular segment of the law where it was possible to identify stakeholder groups that would have strong enough self-interest to assume responsibility for the change process.

Box E.4: Reducing Legal Transaction Costs in the Business Sector

The major reform in 2005-06 was changing the business inspections, which are now part of an independent cabinet and no longer under the control of a single minister as before. The old system was more corrupt and politically manipulated. A second important step regards the issuance of permits, where municipalities are being assisted in establishing electronic registers. This provides a lot more transparency, and local media have become interested and are tracking and reporting on performance, and so far there seem to be no reversals back to manual and manipulated systems, though only a minority of municipalities have these systems in place yet.

One international actor is working with municipalities creating an interactive map for investors that shows where the industrial zones are, the universities, power grids, roads, registers. This becomes a first point of contact and entry point to all other actors and resources. In parts of FBIH, this includes an electronic database with all the 400 documents necessary to run a business in the Federation. All is on-line, clearly embedded in laws, explains timelines, costs, where to go to address issues. A key value-added is that there is now a one-stop shop for this information, and particularly having all the legal documents and procedures in one place and explained simplifies and improves transparency enormously.

For foreign investors, they had previously to do double registry: first through the ministry and then the regular registry, so they faced a cost disadvantage compared with local business. Getting work permits was also very lengthy. The time has now been cut by perhaps 70%, the costs have been reduced by much over 50%, now only need 9 documents instead of 19 – the legal requirements are easier to understand and comply with.

The transformation program had as its point of departure a careful study of the issues and needs as seen from the intended beneficiary point of view, looked at the issues from “the bottom up”, worked with those actors who showed an interest in pushing change – local as well as international businesses, local administrators who wanted to attract and retain more businesses, media and watchdogs interested in more transparency of procedures and accountability of public decision makers. A work program with monitorable targets and agreed benchmarks helped push progress.

- Reforms that are driven bottom-up rather than top-down may sometimes have greater chances of success because the problems identified may be more specific and thus easier to mobilize around;
- Mobilizing for change may require casting the net fairly wide when identifying likely partners (business managers, media, watchdog groups, identify the municipal leaders who want change and are willing to publicly front this).
- Things take time: the agendas of the different actors are not identical, so the process for mobilization needs to be driven by the ability of the actors to reach a common understanding and interest in specific change.
- The change is more likely to be sustainable if the actors have agreed on principles of transparency and accountability (municipal leaders realise local media will be keeping an eye on them and report on performance), and the agreed criteria for success are SMART.

5.2.4 Monitoring and Reporting Results

ROM reports useful but too narrow and too optimistic. The ROM reports are the only external verification that is carried out on a systematic basis across sectors and projects and over time. It uses a coherent methodology and provides ratings based on a defined set of criteria. But the analysis is limited, narrow and technical. It can therefore be useful as a “thermometer” on how a programme or sector is moving. But in particular the last two dimensions, “Impact to date” and “Potential sustainability” necessarily must be quite speculative.

- The EC may discuss with the ROM framework holder the criteria for rating performance in light of larger implementation conditions, to ensure that realism and conditions for providing a “B” in BiH is comparable to a “B” in places like Serbia.

Surprisingly little independent performance tracking. While ROM reports are useful, they are limited in their ability to track performance in the sector – they provide “within the box” assessments of how individual projects are performing. The annual Progress Reports are very useful overviews of general trends and weaknesses but lacking in the more rigorous performance review and ratings that the ROM reports provide. Given the importance of the sector for the EU accession process and the structural and practical stumbling blocks that Rule of Law processes are encountering, it may be useful to have more careful results reporting put in place to ensure that the EC is fully aware of systemic problems and real progress.

- The EC may consider a more comprehensive results framework for Rule of Law support in BiH, given the country’s particularities and performance bottlenecks, both as a means for generating more detailed information, but also as an input to the Structured Dialogue and further JSRS discussions.

- The more comprehensive results framework should build in the considerable reporting already taking place by public bodies, CSOs and others, so that it both becomes a framework that several actors can share and contribute to, but also to allow for more rigorous debate with local actors regarding what such a framework needs to contain in order to be useful for locally owned change.

5.3 Looking Ahead

The EU accession process is the main driver of IPA funding. Based on the experiences from the accession dialogue with Bulgaria and Romania and subsequently with Croatia, the Commission has made it clear that chapters 23 and 24 addressing Rule of Law will be the priority areas of attention for the negotiations. It is also clear that the situation in BiH is serious: the threat of state capture of the judiciary, the potential fragmentation of the judiciary system along ethnic-administrative boundaries, a media that is largely beholden to economic-political interests means that many of the levers of power for transformation are currently not easily available for positive judicial reform and the fight against corruption and organised crime.

In the EC's "Enlargement Strategy and Main Challenges 2011-2012" (COM(2011)666; 12.11.2011), the Commission notes that "*The enlargement policy has proven to be a powerful tool for societal transformation... Commitment, conditionality and credibility have been situated at the core of the accession process and its success*" (ibid p. 2). Yet it goes on to note that "*Delays and blockages were particularly serious in Bosnia and Herzegovina and Albania*" (ibid p. 3). There is thus an understanding that there are both systemic and actor-driven challenges facing the BiH actors who want change, and the EC that wishes to support it. The EC also makes it clear that it is willing to use the full tool-kit including conditionality in order to achieve results.

The programming for the coming seven-year cycle of IPA funding 2014-2020 thus provides a unique opportunity for reconsidering the overall approach to Rule of Law performance. A number of general principles seem to flow from both the assessments of earlier performance and the views and recommendations by various stakeholder representatives.

5.3.1 Changing Frameworks for Rule of Law Activities

1. National parameters for longer-term programming need to be in place for sector programming to be realistic: public financing, legal/regulatory frameworks, and institutional structure. To the extent any of these are missing, they should be among the top issues on the reform agenda.
2. The JSRS/Structured Dialogue provide a solid *political-technical* foundation for an IPA-II sector program, but long-term judicial reform requires predictable, stable planning parameters and financing, so programming instruments and cycles need to support this:
 - **Priority** programs/projects could typically have five- to ten-year horizons with clear "stoppage points" for review and adjustment (for example after two, five and seven years on a ten-year program) but with financing in principle available for the entire program period.
 - RoL programming cycles should be linked with the planning/budget cycle to maximize ability to program and adjust in line with likely financing constraints.

3. To the extent that “political capture” is seen to be a genuine challenge, a political economy analysis that maps relevant actors, interests and likely roles in RoL dynamics might be helpful to do a “vulnerability study” of the threats to the independence of the judiciary. From this, a preventative action plan could be developed.
4. Sustainable judicial reform will require the strengthening of public sector accountability actors – ombudsmen, internal inspectorates, internal audit, supreme audit institution, parliamentary/assembly bodies – as critical supplements to legal action (*horizontal* accountability in the state). These are not actions to be funded over RoL, but should be programmed as important parallel activities, to the extent possible.
5. Sustainable judicial reform will also require support to non-public actors to become more structured, long-term and strategic, building *vertical* accountability systems and capacities. This may or may not be a RoL component, but should be encouraged.
6. Rule of Law transformation is going to be costly in terms of financing, time and staff – but is required if real changes are to be produced. The EC should set aside significant IPA resources for this, but equally important should ensure own capacity in the Delegation that can both carry the policy dialogue as well as monitor the performance of the various actors that are receiving program/ project support.

5.3.2 Programming Rule of Law Activities

7. Reducing the number of basic programming instruments and their periodicity for IPA II, as is intended, is strongly supported. While overarching objectives can be defined and foreseen to remain stable during the period, sub-components and implementation details can be allowed to shift flexibly.
8. Continued institutional support to key public sector actors (HJPC, JPTCs, courts, prosecution offices) should take a sector approach, be long-term and include monitorable “corporate culture” dimensions in the results framework/log-frame
9. Programming in a contentious field like judicial reform should be based on an inclusive programming process to ensure broad stakeholder involvement, ownership and agreement (the JSRS and Structured Dialogue show that this is possible) – for major program components this will take time.
10. A realistic five- to ten-year scenario involving the rapid increase in war crimes cases should be modelled to see which resource constraints the overall courts system will be facing. While much of the infrastructure, training, etc. for war crimes will be relevant also for subsequent RoL concerns like corruption and organised crime, there are trade-offs and opportunity costs of allocating a majority of resources to one particular activity. These need to be assessed to ensure that optimal use is made of whatever the limiting resource is up against the political-legal priorities of BiH as a society.

5.3.3 Implementing Rule of Law Activities

11. The time between prioritization in principle and actual activity design needs to be reduced. Basic design with a results framework that include clear Outcome and most likely Outputs should be sufficient for start-up, piloting and a detailed design phase.

12. Because RoL activities tend to come up against unforeseen blockages, flexibility in reallocation of resources, shifting of timelines etc. should be accepted and quickly processed: while Outcomes normally would remain fixed, Output prioritisation and activity schedules may be reformed.

5.3.4 Monitoring and Reporting Rule of Law Activities

13. Most of the basic frameworks have been put in place. Project results frameworks should therefore focus a lot more on implementation results, Outcomes from organisational change and Impact on intended beneficiary groups and societal performance.
14. An overall Monitoring and Results framework for the RoL program should be designed that is strategic in terms of which projects/activities are to be monitored how often with which instruments (internal administrative reporting, external ROM reports, ad hoc in-depth studies), and which variables are to be traced how far out the delivery chain. The design should ensure that key variables *across* activities are monitored in similar ways (changes to “corporate culture”, client satisfaction, business use of court system to settle disputes etc.).
15. While ROM reports and “SMART” indicators will be part of such a system, the EC should also set aside funds for more innovative quality assurance activities, using local knowledge centres, CSOs and others, to track perceptions, experiences of groups that come in touch with the legal system. Use of social media, qualitative surveys etc. can provide cost-efficient, quick and flexible ways of identifying successes and short-comings, and test new approaches and ideas on how to further improve legal sector performance.

Annex F: Country Report, Croatia

1. Country Strategy and Programme

The Stabilisation and Association Agreement (SAA) between Croatia and the EU was signed in October 2001 and entered into force in February 2005. In June 2004 European Council granted the status of candidate country to Croatia and accession negotiations with Croatia were opened in October 2005. The Republic of Croatia has completed negotiations on 30 June 2011 and the Commission issued the Opinion that Croatia meets the political criteria and expects Croatia to meet the economic and *acquis* criteria and to be ready for membership by 1 July 2013.

In December 2011 Croatia signed the Accession Treaty and of 1 July 2013 Accession of Croatia will be subject to the ratification of the Accession Treaty (Croatia 2011 Progress Report).

1.1 Rule of Law Situation

In its annual Progress Reports (PR) 2007-2011 the European Commission has been following development in the Rule of law in Croatia:

In March 2009 the European Parliament complimented Croatia on the progress made in 2008 on the road to EU membership stressing the need for more efforts on fighting organized crime and corruption, two of the most controversial issues in the report drafted by Hannes Swoboda (PES, AT). The same year the Commission applauded the introduction of the new legislation and organizational changes for reforming the judiciary and for fighting corruption and organized crime led by increased activity of the Office for Combating Corruption and Organised Crime (USKOK). However, considerable challenges remained in key areas, such as improving the independence and efficiency of the judiciary, overhauling the functioning of the public administration and in fighting organized crime and corruption. Finally in the 2011 PR the Commission concluded that the country has made good overall progress, in particular in the fields of judicial reform whereas some remaining commitments still need to be met before accession.

With regard to the rule of Law in general, the PR found that good progress has been made in regard to the legal basis for the independence of the judiciary and improving its efficiency. However Croatia needs to build a track record that demonstrates the recruitment and appointment of judicial officials based on merit and increase of judicial efficiency. Positive results in the anticorruption field also needed to be supported with clear track record of effective handling of corruption cases and implementation of the new preventative legal framework.

1.2 Country Programming and Country Programmes 2007-2011

The revised Croatia 2007 Accession Partnership defined two priorities: (i) implementation of the strategy and action plan for judicial reform; (ii) accelerated implementation of the anti-corruption program and related action plans. In addition, the 2007 Progress Report recommended raising public awareness of corruption as a serious criminal offence.

Croatia's own needs and priorities in the framework of the accession process are presented in the "Program of the Government of the Republic of Croatia for assumption and implementation of the acquis" from January 2010 (Program 2010) which describes under the political, economic and acquis criteria the achievements as well as the plans. In addition Croatia has adopted a number of sectoral strategies and action plans: Decentralization Strategy; National Strategy for the Development of the Intellectual Property System 2010-2012; Revised Action Plan for the Judicial Reform Strategy; Revised Action Plan for the Anti-corruption Strategy; Strategic Document of the Purpose of Combating Organized Crime. Furthermore, IPA Components III, IV and V are available to Croatia since 2007.

Identified main goals in the National Strategy for the Creation of an Enabling Environment for Civil Society 2006-11 adopted in June 2006, ensure the legal base for a more active role of the CSOs. This created preconditions for a political and civil dialogue on the possibilities and challenges related to the Croatia's accession to the EU, consultation with the Government in adopting laws, regulations through formal and informal consultation mechanisms regarding the accession process; policy analysis and public debate on the effectiveness of the sectoral reform processes.

IPA 2007 and 2008 assistance under Component I provide support to the judiciary, civil society, and the fight against corruption. It builds on assistance provided to Croatia under the national programmes *Community Assistance for Reconstruction, Development and Stabilisation* (CARDS 2001-2004), *Programme of Community aid to the countries of Central and Eastern Europe* (Phare), *Instrument for Structural Policies for Pre-Accession* (ISPA 2005-2006) and *Special Accession Programme for Agriculture and Rural Development* (SAPARD 2006), the Phare-funded multi-country and horizontal programmes such as *Technical Assistance and Information Exchange instrument* (TAIEX) as well as the CARDS Regional Programme in 2005 and 2006. As regards the political criteria, CARDS and Phare assistance to Croatia contributed to strengthening and modernization of the judiciary capacities and structures, public administration and civil service reform, as well as to civil society development.

The 2011 IPA programmes for Croatia totalled € 156.5 million focused on institution-building and preparing for implementation of the EU's common agricultural policy and cohesion policy.²⁹ At the program level, National Programme allocations are broadly in line with indicative allocations spelled out in the Multi-annual Indicative Planning Documents (MIPD). However, some of the evaluation reports as well as interlocutors met during the visit have indicated that selection of the particular initiatives is sometimes the result not only of the declared priorities of EU assistance but also operational considerations concerning the availability of project proposals of an adequate quality and backed by sufficient capacity (Country Program Interim Evaluation, CPIE, final report 2010).

In terms of main country challenges and needs assessment, the MIPD 2011-2013 quotes the PR 2010 that Croatia has made good progress regarding the judiciary and fundamental rights though corruption is considered to be a crucial challenge (MIPD 2011-2013). The objectives of IPA support in this sector are consistent with the Enlargement Strategy's key challenge for strengthening the

²⁹ Croatia 2011 Progress Report Accompanying *Communication from the Commission to the European Parliament and the Council: Enlargement Strategy and Main Challenges 2011-2012* (COM(2011) 666)

judiciary and the fight against organized crime, as well as with the "Europe 2020" strategy of reinforcing the rule of law to improve conditions for the business environment and increase growth and competitiveness. The sectoral objectives are related to chapters 23, **Judiciary and fundamental rights**, and 24, **Justice, freedom and security** of the accession negotiations.

According to the CPIE Final Report 2010 "To a large extent the project pipeline in the various areas of assistance was always satisfactorily filled. There were sufficient projects to distribute the resources allocated, but with some notable exceptions from the strategic objectives. Despite encouragements, a substantial project list in the field of public administration reform has never been set up essentially for shortage in the submission of eligible projects. The same applies to anti-corruption policy, with very few projects submitted in the period compared to expectations" (CPIE Final Report 2010).

For the purpose of this report a list of ROL projects for IPA 2007–2011 was provided by the European Commission and inserted in the Project Inception Report (Inception report May 11 May 2012). The list contains 41 projects with total allocations of € 49.3 million³⁰ of which 17 projects are listed in the field of justice reform, 15 anti-corruption projects, 6 for fundamental rights and 3 for the police. According to these data, IPA support to the justice sector has been provided on a continuous basis with a number of follow up projects while funding for anti-corruption has been strengthened as of IPA 2008 by supporting specific institutions and CSOs.

A total of just over € 5.8 million or 50% of the all anticorruption projects supported from IPA 2011 have been allocated to civil society. Programmes for supporting the CSOs for monitoring and promoting transparency, effectiveness, accountability and inclusiveness of public administration in fighting corruption are implemented under the Civil Society Facility coordination.

Table F.1: Distribution of IPA funds 2007-2012 by sub-fields, in €

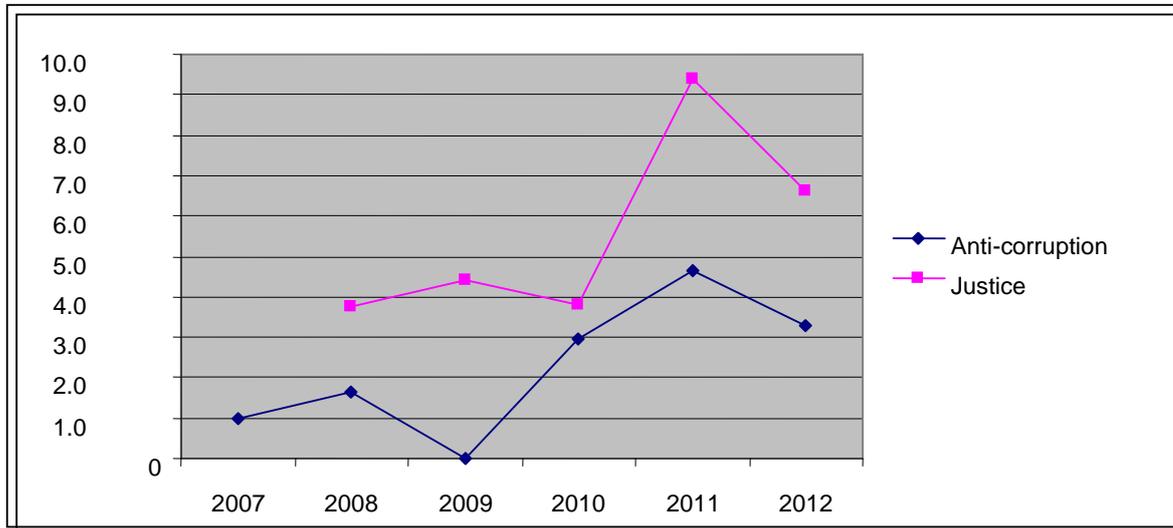
Sub-fields	2007	2008	2009	2010	2011	2012
Anti-corruption	1,000,000	1,655,000	46,890	2,960,000	4,653,500	3,300,000
Justice		3,765,000	4,393.330	3,825,000	9,380,000	6,600,000

Source: Project List provided by EC for Inception Report

As decided by the Commission at the end of 2008, the effective implementation of IPA programmes under Components I to IV could only start once the "conferral of management powers " has been completed.

³⁰ The country officials have considered this list to be not complete and not clear as some components of the same projects have been presented separately as Projects. After the validation phase comments have been taken in consideration to improve the factual basis of the report.

Figure F.1: Distribution of IPA funds 2007-2012 by sub-fields, in € million



Decentralized management of the assistance has been implemented by establishing the Central Finance and Contracting Agency (CFCA). This body was established by Decree³¹ by which all rights and obligations are transferred from the Department for Financing EU Assistance Programmes and Projects – Central Finance and Contracting Unit within the Ministry of Finance – to the CFCA. As stated on its web site, the CFCA is responsible for the overall budgeting, tendering, contracting, payments, accounting and financial reporting of all procurement in the context of the decentralised EU funded programmes in Croatia³². The CFCA carries out the tendering and contracting elements for Institution Building programmes and Investment support (<http://www.safu.hr>). It operates in close cooperation with the Senior Programme Officers (SPOs), line ministries and governmental bodies that are the final beneficiaries of the projects. The CFCA is also the specialised agency for the administrative and financial management of twinning operations. It delegates technical procedures to national authorities but project managers and Project Implementing Units (PIU) in all public administration are responsible to the CFCA.

The Croatian decentralized implementation system has been experienced as complex by a number of the local actors, with claims of delays and lack of transparency in parts of the process. The EU Delegation itself sees the CFCA performance as expected: project tendering, contracting and financial management are tasks that everywhere are subject to controls and verification and thus require time. While this issue is not a direct concern of this study *per se*, implementation delays is a problem that has come up across the region. Croatia may thus be an interesting case for seeing if there are ways of streamlining and accelerating IPA funded activities when responsibilities are handed over to national actors.

³¹ Official Gazette No. 90/07, 114/07 and 29/2012

³² <http://www.safu.hr/en/about-us>

Despite the perceived problems of delays, contracting rates for the different programs are very high as published on the CFCA web site: CARDS 2004 **94.6%**; PHARE 2005 **88.2%** PHARE 2006 **84.7%** ISPA **98.0%** IPA 2007 I component **92.2%** IPA 2008 I component **94.7%**.

2. Judicial Reform

The reform of the Croatian justice system is being implemented through the measures of the revised *Action Plan of the Judicial Reform Strategy* of 2008. So far, 85% of the measures have been implemented. The Ministry of Justice is systematically monitoring the implementation of the measures, analysing the progress made in implementing the Judicial Reform Strategy (JRS), and seeking ways to further speed up and improve the reform³³ The next step has been a revision of the Action Plan at the beginning of 2010 and a new JRS for the period 2011 – 2015.

According to the PR 2011 there has been good progress in this area. Implementation of the JRS and action plan has continued, with a large volume of legislation adopted. There has been good progress as regards the independence of the judiciary, which has been further strengthened through the implementation of amendments to the Constitution and the laws on courts, the State Judicial Council (SJC), the State Attorneys Offices (SAO) and the Judicial Academy (JA) and the adoption of the necessary secondary legislation. A new State Judicial Council (SJC) and a new State Prosecutorial Council (SPC) were constituted in February 2011 according to the new Constitutional provisions. Progress has been made as regards the professionalism and competence of the judiciary. Croatia has adopted and implemented various measures leading to improved efficiency of the judiciary. Reform of criminal procedures is being implemented. The Civil Procedures Act was amended in May 2011 and the new Administrative court system is being implemented. The Integrated Case Management System (ICMS) is fully in place in 70 of the planned 103 courts, and will be rolled-out to the remainder in 2012.

Croatia has introduced a unified statistical system for the monitoring of cases by connecting the ICMS with other IT systems. However, further improvements are necessary in order to enable improved case management, monitoring of the overall length of proceedings and analysis of the general efficiency of the judicial system, and the productivity of judicial officials. Misdemeanour courts continue to suffer from a shortage of equipment and a very low standard of premises. As regards the promotion of Alternative Dispute Resolution (ADR), the mediation system has been simplified with the adoption of a new Mediation Act in January 2011. However, the effect of this law remains to be seen.

The system of judicial inspections has produced good results. The number of inspectors responsible for monitoring the work of courts and state attorney's offices has increased. There has been continuing progress with the application of the new Criminal Procedure Code, which was further fine-tuned in July 2011. Applied to organised crime and corruption cases since 2009, the new criminal procedure has accelerated the investigation and the prosecution stages, with better cooperation between the police and prosecution services leading to more indictments.

³³ "Program of the Government of the Republic of Croatia for assumption and implementation of the acquis" 2010

There has been some progress as regards the impartiality of the judiciary, with the SJC becoming responsible for the system of assets declarations of judges. The requisite systematic and accurate checking of judicial official declarations of assets needs to be assured. Progress has been made as regards the accountability of the judiciary. An improved system of disciplinary proceedings has been adopted for both SJC and SPC, which provides for an extended catalogue of disciplinary offences, broader sanctions and the possibility of a separate investigation commission. However, a track record of implementation of the disciplinary proceedings needs to be further developed.

Progress has been made as regards the professionalism and competence of the judiciary. The JA is functioning well providing professional training programmes, including initial training and covering matters of EU law. The JA is currently managing and implementing the programme for the first year of the School for Judicial Officials. Progress has been made in relation to the efficiency of the judiciary. A new system for publication of case law is now in operation, the backlog of old criminal cases has been reduced substantially and Croatia has adopted and implemented various measures leading to improved efficiency of the judiciary. Reform of criminal procedures is being implemented. The 2011 amendment of the Civil Procedures Act was the first step towards further amendments to prevent repeated or extensive referrals of cases from second to first instance courts and the new Law on Enforcement of Financial Assets entered into force. The new enforcement system that was established by the adoption of the new Law on Enforcement and the Public Bailiff Act will be fully applicable in 2012.

Overall continuous and subsequent implementation of the different EU programs based on the well-defined strategic priorities has led to strengthening of the independence, impartiality and efficiency of the judiciary what may serve as a best practice for the region.

2.1 Assistance Provided

The priorities in the justice sector that were supported by the EU Programmes are the following:

- **Capacity building:** CARDS 2002 Capacity Building for USKOK (March 2005-December 2006) with the value of twinning component of € 650,000 and Supply component of € 350,000; CARDS 2003 supported the Training and Education of Prosecutors (December 2006-July 2007) by integration of this project within the current institutional structure of the Judicial Academy and its Regional centres. The value of the twinning component was € 800,000 and Supply component was € 200,000.
- **Institutional support:** CARDS 2003 institutional support to the institutions involved in anti-money laundering in Croatia, through structural consultations between the involved institutes, improvement of the international cooperation and optimizing the legal framework. The value of the twinning component was € 840,400 and Supply component € 85,000 and was financed over the national budget post Preventing and Combating Money Laundering (June 2006-December 2007).
- **Efficiency:** CARDS 2004 Support to the Pre-trial proceedings in criminal matters. The value of the twinning light contract was € 250,000.
- **International cooperation:** CARDS Regional Action Programme 2006 Support to the Prosecutor's Network (PROSECO) aimed at strengthening the legislation and institutional

capacities of General Prosecutor's Office of South-eastern Europe in view of a more effective co-operation against serious crime.

Coordination with other donors has been crucial for achieving strategic goals in the justice sector. Other donors have also provided support to the justice reform and especially to the institutional capacity building:

- **The Dutch program MATRA-EVD:** Establishing of the Strategy Development Unit within the Ministry of Justice (2006 - 2008) supported strengthening the institutional capacity of the Croatian authorities to achieve the implementation of the “Strategy of the Reform of the Judicial System” and its resulting Action Plan and establishing the Strategy Development Unit (SDU) within the MoJ. The value of this MATRA project was € 300,000
- **The World Bank IDF Grant:** Institutional Capacity Building for Monitoring Judicial Efficiency (finished in November 2006) whose main purpose was to enhance the institutional system of court statistics and judicial performance monitoring mechanism.
- **The World Bank loan:** Justice Sector Support Project USD 27.9 million loan and additionally € 1 million (Kingdom of Netherlands), with an aim to modernize and rationalize the court network and SAO; justice sector budgeting and performance management; improving the legal framework and efficiency in enforcement of judicial decision and legal aid. Components related to the USKOK were reconstruction of the HQ building in Zagreb, upgrade of the CTS and future interconnectivity with the ICMS, procurement of HW/SW and small projects related to the education of the SAO/USKOK employees.

Support for the Justice reform through IPA has also been substantial with projects often overlapping through the sectors (justice reform and corruption/organized crime), especially in the case of the USKOK. A total amount of € 28 million is provided to the Ministry of Justice, Courts, Judicial Academy, the USKOK and other Public Prosecutors office, the ICMS and others.

Table F.2: IPA Projects 2007-2011 focusing on Justice Reform

	IPA	Project Title	Amount
1	2008	Development of the Probation Services in Croatia (3 projects)	1,140,000
2	2008	Development of the Probation Services in Croatia (3 projects)	225,000
3	2008	Development of the Probation Services in Croatia (3 projects)	270,000
4	2008	Support to the Reform of Criminal Proceedings (2 projects)	1,100,000 800,000
5	2008	Support to the Reform of Criminal Proceedings (2 projects)	1,100,000 800,000
6	2008	Support to the setting-up of the Judicial school	230,000
7,8	2009	Professional development of judicial advisors and future judges and state attorneys through establishment of self sustainable training system. (2 projects)	1,052,665 133,000
9-11	2009	Further improvement of institutional capacity of all misdemeanour courts and development of ICMS compatible modules at selected misdemeanour courts (3 projects)	1,052,665 850,000 630,000
12	2009	Strengthening Admin Capacities of the Ministry of Justice	207,000

13	2009	Roll-out of ICMS on Selected Municipal Courts	468,000
14	2010	Improvement of the Enforcement System in Croatia	1,495,000
15	2010	Strengthening the Efficiency of Judiciary in Croatia	2,330,000
16	2011	Support to the rationalization of Court network	9.380,000
17	2012	Improvement, Integrated Case Management System, ICMS	6,600,000

Development of the Probation Services and further improvements to the institutional capacity of all misdemeanour courts have been supported by several IPA projects (2008, 2009) despite the fact that there is not any reference to the probation system and misdemeanour courts in the MIPDs as main instrument for planning and setting out the EU priorities for assistance.

2.2 Results Achieved

Good progress was achieved in the area of the judiciary with continued judicial reform and implementation of the JRS and action plan. Special importance was attached to the good progress as regards the independence of the judiciary which was strengthened through the implementation of amendments to the Constitution and the laws on courts, the SJC, the SAOs and the JA as well as the adoption of the necessary secondary legislation (PR 2011). The new SCJ and SPC constituted in February 2011 are to further strengthen the independence of the judiciary. In addition Croatia has adopted and implemented various measures leading to improved efficiency of the judiciary. This includes the Reform of Criminal Procedures, the Civil Procedures Act amended in May 2011, the new Administrative court system and the ICMS which is to be fully in place by the end of 2012.

The vast majority of the reforms have been implemented and their sustainability is ensured through different follow up projects and continuous subsequent EU support.

One good example is the JA which exists for 10 years and was established as an independent institution in 2010 by a separate Law. Initially supported by CARDS 2001 as a beginning of the institutionalized training, continued via PHARE 2005 when it was established as an independent institution within the judiciary, the IPA 2008 Twinning supported the program of the State Educational Institution for the Judiciary and the new law, a benchmark for the EU integration. It has been raised at the level of the Strategic goal and finally the IPA 2009 Twinning light for Professional development of Judicial Advisors and Future Judges and Sate Attorneys through the establishment of a self-sustainable training system. At this moment the JA is a stakeholder in 10 IPA projects (3 IPA 2007, 3 IPA 2008, 1 IPA TAIB 2009 and 1 IPA 2009, 2 IPA 2010) and main beneficiary in one IPA 2009, one IPA TAIB 2008 and one MATRA FLEX project.

The example of the Judicial Academy presents a well-sequenced project which builds directly, and within a short space of time, on the results of a preceding project and whose results, in turn, will be the basis of a succeeding project. *“The sequence would stop when the sector strategic target has been achieved. In effect, sequencing is therefore also a mechanism for maximizing impacts and a sector-based approach (SBA) is expected to facilitate project sequencing.”*³⁴

³⁴ Mid-term Meta Evaluation of IPA Assistance Evaluation Report, 22.02.2011

Key factors for success and sustainability as stated by the interlocutors during the on-site visit was the ensured continuous and subsequent EU project support and salvation of the problem with fluctuation of the project involved experts by their employment in the JA.

However the interlocutors from the JA have expressed their criticism in relation to the project prioritising and project implementation process that may affect the ownership. In their view the process for selection is very slow, the PIU is established only in the MoJ and has been detached from the real sector. The JA has never been invited to participate at a coordinating meeting and MoJ should be obliged to coordinate priorities with the main beneficiaries. In addition in their view it would have been good to start with a pilot project.

Box F.1: Findings, IPA 2009 Project by the Integrated Monitoring System

Monitoring Report N^o: 2011/2 – Date of Issue: 11/03/2011 – Project Title: “Further improvement of institutional capacity of all misdemeanour courts and development of ICMS compatible modules at selected misdemeanour courts”.

Project Allocation: € 2,365,000 – EU Contribution: € 2,048,250 – National Co-financing: € 316,750

Overall objective: improve functioning and management of misdemeanour courts.

Strategic documents: This objective is in line with following documents: Accession Partnership, Programme of the Government of the Republic of Croatia on the transposing and implementation of the *acquis communautaire*, Croatia 2010 Progress Report, Strategy of the Reform of Judiciary and related Action Plan.

Slow proces for amending the Project Fiche: On November 17, 2010, the MoJ requested the approval of the proposed changes to the Project fiche. It was formally submitted to the EUD by CODEF on November 30, 2010. On 12 January 2011, CODEF received the memo by which the EUD informed them of the approval of proposed modification to the Project fiche. On February 23, 2011, CFCA officially forwarded its comments (Note to the File) on the TW Project fiche to the MoJ. Until the end of monitoring period the MoJ did not receive any comments from CFCA to revised Terms of reference nor to the revised tender documentation for supply component. On February 23, 2011, CFCA officially forwarded its comments on the TW Project fiche to the MoJ. Until the end of this monitoring period the MoJ did not receive any comments from CFCA to revised Terms of reference nor to the revised tender documentation for supply component.

Recommendation/Conclusion: CFCA should send comments on the tender documentation within the reasonable and agreed deadlines. It should avoid situations that the documentation is not commented/approved for the period more than 2 months

An evaluation finds the procurement and implementation of projects in the area of judiciary suffered a series of problems that caused significant delays, in some cases potentially affecting overall projects' success. “*On average, contracts for Phare programs have been signed more than one year later than the schedule, and invariably one or two days before the contracting deadline established in the Financial Agreement. No significant reverse of trend is registered with IPA, considering that out of twelve contracts planned under IPA 07 and 08 only one supply contract was signed prior to the last cut-off date (CPIE, p. 114).*” Similar problems occurred also with respect to implementation. In the case of JA the delays were essentially due to administrative reasons, and at the last SMSC meeting CFCA reported that payments are likely to be finalized before expiration deadline. The project on Mediation experienced a lack of delivery of a fair share of expected outputs, and it appears unlikely that the contractor will be able to catch up within the final deadline. There are no ROM Reports for Croatia and therefore there is no independent project monitoring and EUD is not

aware of independent project assessment. Projects are being evaluated by the “*Country Programme Interim Evaluation*” CPIE whose assessment is external and independent but managed by Ministry of Regional Development (MRDEUF). According to some interlocutors, assessments are performed at monthly meetings of the PIUs. Projects are “monitored” by the Integrated Monitoring System (IMS) every six months, but reports are drafted by project managers directly under the authority of the beneficiary authority. These reports are then revised by the Evaluation unit of MRDEUF and submitted to EU for endorsement.

2.3 Findings and Conclusions

The projects funded under Judicial reform sub-dimension address the priorities as laid out in the strategic objective and the MIPDs.³⁵ The main strategic objective for the judiciary is to implement an efficient judicial reform including among others the reduction of the case backlog in courts; to ensure an acceptable length of judicial proceedings and the enforcement of court decisions; to rationalize and modernize the courts and to enhance the independence, accountability and professionalism in the judiciary; to improve the access to court and transparency towards the public and civil society; to support the Croatian authorities in adopting common standard of criminal (MIPD 2009-2011) and to strengthen judicial independence and efficiency (MIPD 2011-2013). Indicators to assess the impact of EU support may include, inter alia Consolidation of qualitative criteria for the appraisal of judges and prosecutors; reduction in the length of court proceedings and reduction in the backlog of cases; Improved court management systems; number of successful prosecutions and final convictions for cases of organized crime, corruption, money laundering and trafficking of human beings and narcotics (ibid).

Projects supported by the IPA Component I 2007–2011 show a high degree of relevance as they are well aligned with the multiple needs of accession and the strategic objective. In some cases, assistance specifically addressed negotiations requirements for specific acquis chapters i.e. opening and closing ‘benchmarks’ for chapters 23 and 24. In remaining cases, assistance was directed to the strengthening of Croatia’s capabilities for the absorption of funding under structural instruments.

There have been cases where a partial development has been achieved, such as the IPA 2010 project component related to enforcement. According to the interlocutors only financial enforcement has been introduced and there is a need to continue with other types such as land property or other property rights. It is also considered that the IT component – a case management system (CMS) for the administrative court – has failed as the new IT system has not been developed to upgrade the existing system. The new IT system was slower and more cumbersome than the old one and beneficiaries returned to their old IT system. However, beneficiaries indicated that the IT component was a small component and that its failure had no major consequence.

³⁵ Meta evaluation 2012: (i) The Croatia evaluation concluded that the division of funding allocations by priority axis under IPA programming made the strategic objectives more accession relevant and better linked to accession, as compared to pre-IPA assistance. (ii) -The Croatia evaluation also reported that there were marked improvements in the formulation of IPA 2007-8 project objectives as compared to those for the preceding PHARE 2005- 6 programmes. On the basis of these assessments the proportion of project objectives meeting at least of four of the SMART criteria was found to have doubled over the 2007-9 period; increasing from 31% in 2007 to 62% in 2009.

2.3.1 Performance of Assistance

At the general level, a major strategic document is the Government's **Strategic Development Framework** (SDF) for 2006-2013. The full implementation of SDF would ensure the medium-term sustainability of the results obtained by Croatia in various areas of the accession process. Similarly, a number of interventions are to a various extent linked to specific sectoral strategies³⁶, such as the JRS and the Anti-corruption Strategy³⁷ and related action plans as regards the Political Criteria, as well as various strategies established for instance in the field of social and economic cohesion policies (education and employment, regional development, enterprise support etc.), transport policy and protection of the environment. Needless to say, being aligned with a specific sectoral policy is not always sufficient to ensure an appropriate degree of beneficiaries' ownership of projects, as demonstrated by the difficulties reported in this respect for the cluster of projects in support of the Roma minority³⁸.

Programs have been generally well focused on the accession priorities established in the Enlargement Package³⁹. This is the first and foremost justification for all projects financed although with some qualifications. Some projects explicitly addressed key negotiations requirements for specific acquis chapter (i.e. opening and closing benchmarks). Others are aimed at contributing to more general objectives of institutional strengthening and other soft acquis requirements. In particular, in certain areas assistance mainly focused on increasing management and absorption capacities for other EU funds, including in perspective structural instruments. Evidently, the priorities for assistance have evolved over time as negotiations were progressing (opening and closing of chapters), and Croatia getting closer to accession making negotiations-driven assistance comparatively less relevant. In the field of Political Criteria, the assistance typically focused on comparatively longer-term needs, going beyond the dynamics of negotiations.

According to interlocutors and supported by the META report 2011, usually two-thirds of all projects proposed by the Ministry of Justice are selected. All interlocutors acknowledge a considerable positive impact of EC assistance, yet informants pointed to several challenges:

- The period between project idea and project implementation could run as long as four years. During this period reality changes, especially in a reform-intensive country such as Croatia, so this long planning phase often requires a change of project activities and/or results;
- Changes to the project fiche are difficult to achieve due to complex rules. Sometimes as much as four months is required to introduce new activities in a project. Because of such delays,

³⁶ In many cases prepared or updated with the contribution of EU assistance. See Section 5.2 on Relevance.

³⁷ The IPA 07 project on Inter-agency cooperation aims, among other issues, at helping the monitoring of this action plan's implementation.

³⁸ There are two policy documents in this area: the National Program for the Roma and the Action Plan for the Decade of Roma Inclusion.

³⁹ The enlargement package documents include in particular the Accession Partnerships, EC Progress Reports, and the National Program for the Accession of Croatia into the EU (NPAEU) – which is substantially the Croatian version of the NPAA – National Plan for the Adoption of the acquis.

technical specification of things like IT equipment may become outdated. One result is that there is an incentive to repeat an activity or to accept an unsatisfactory project design.

Interlocutors also indicate that complex rules and obligations reduce the efficiency of the project and also their own efficiency within the Ministry since as project manager (a role they have on top of other responsibilities within the Ministry) they are obliged to spend a lot of their time on administrative issues. On the other hand they also acknowledged that managing an EU project permits them to increase their profile within the ministry.

Handing over the responsibilities to the CFCA has, as noted above, led to some frustrations regarding the IPA funded activities. This has to some extent been compounded by high staff turnover in the Ministry of Justice when it comes to RoL activities since a number of staff have left after having received further training.

More than the design of the project, the profile of the experts seems to be important (*“a good expert can save a poorly designed project. A well-designed project cannot overcome poor expertise”*). The Ministry of Justice noted positive experiences with experts who were knowledgeable, competent, organised and eager to contribute to a project’s objectives. In other cases, however, the profile of the expert selected was not truly appropriate (specific cases were mentioned). Furthermore, the Ministry noted that while they are presented with one pool of experts when a twinning contract is being agreed, they may end up with quite different persons during project implementation, so that the Ministry may end up with most of the originally proposed and approved experts not actually being involved in project implementation.

2.3.1 Relevance of Assistance

Relevance refers to the appropriateness of program design to the needs and the constraints of Croatia in relation to the EU accession process. This includes the extent to which EU assistance is aligned with accession priorities and relevant national and sectoral strategies. Other criteria include the appropriateness of programming focus, the consistency of the project pipeline in the various sectors, the coherence and complementarities of the activities, and the balance in the use of financing instruments.

In the case of Croatia, Judicial reform as well as the fight against corruption and organized crime have been seen as priorities and appropriately addressed in all relevant MIPDs and PRs. The negotiations have been guiding the planning process: the early projects were related to the opening benchmarks, and the contents of projects have progressed to be in line with the closing benchmarks. However, not all projects represented strategic priorities, and some of the main reform issues such as the police reform remained insufficiently addressed regarding issues like impartiality and principles of merit for professional careers.

Interlocutors consider EC support as a main factor for the many recent improvements within the Justice sector. For the Ministry of Justice as well as independent observers, IPA support has been very important as it has contributed to the improved selection process for judges and prosecutors, supported the establishment and running of the Judicial Academy, and provided critical support to the reforms of the Administrative Court and the establishment of a new court. It has furthermore assisted the establishment and development of USKOK, mediation services, and IT systems such as the ICMS and its implementation throughout the court system.

According to the CPIE Final report 2012⁴⁰ the vast majority of projects show a high degree of relevance since they are well-aligned with the multiple needs of accession. In some cases, assistance specifically addressed negotiations requirements for specific *acquis* chapters – that is, the opening and closing ‘benchmarks’. In remaining cases, assistance was directed to the strengthening of Croatia’s capabilities for the absorption of funding under structural instruments.

The point made by CPIE regarding ownership is important for understanding this high degree of success along the Relevance dimension: “*The degree of project ‘ownership’ demonstrated by beneficiaries’ remains the single most important key to projects’ success. In particular a close involvement of appropriate decision-makers should be sought since the early stage of project implementation and earlier, during programming phase. Such proactive collaboration would ensure a constant alignment between activities and expectations, and enhance the chances that projects’ outputs (strategies, plans, recommendations etc.) are duly taken over. Difficulties in this sense reportedly occurred with some projects in the field of judicial reform.*”

2.3.1 Effectiveness of Assistance

The projects related to the Justice reform have been well designed to address the main objectives of the accession process and relevant national and sectoral strategies such the Judicial Reform Strategy and Action Plan. Importance was given to the independence of the judiciary, which has been further strengthened through the implementation of amendments to the Constitution and the laws on courts, the SJC, the SAOs and the JA as well as to the adoption of the necessary secondary legislation, as pointed to previously. In addition assistance has been provided and projects have been implemented leading to improved efficiency of the judiciary such as the Reform of Criminal Procedures and the Civil Procedures Act, the new Administrative Court system and the integrated case management system (ICMS).

However, some interlocutors expressed concerns in relation to the Sectoral approach which is now being implemented in Croatia. Ministry of Regional Development (MRDEUF) staff experienced the sector approach as challenging since it was felt to have been introduced without sufficient time for authorities to make necessary changes. For some authorities, the capacities and mechanisms for a coordinated sector approach that would ensure the desired distribution of assistance among national services (police, justice, etc.) remained inadequate. However, despite these weaknesses referred to by some, the effectiveness of IPA programming in the justice sector has overall been very good with good prioritization and sequencing.

It is difficult to provide more specific measurements for the effectiveness because of lack of good indicators, but according to the CPIE 2012 Report in general, IPA completed projects have delivered the expected results, and the prospects for almost completed ones are fairly positive. Initiatives addressing specific areas in the legislative and policy framework have been comparatively more successful than those aimed at strengthening administrative capacity.

Informants provided the following as the key success factors for the EU projects: (a) the real possibility of accession is an important factor to encourage reforms, though a number of observers claimed that national authorities seem less interested in reforms and more interested in getting

⁴⁰ 2009 Country Program Interim Evaluation of EU Pre-accession Assistance to Croatia, 12 March 2010

prepared for the management of structural funds; (b) the continuous physical presence of experts and country officers responsible for the implementation of the programmes and of EUD project managers who thus establish trust and have on-the-ground knowledge that provides better needs identification; (c) long terms projects such as the ICMS that provides more solid organisational embeddedness; (d) reforms implemented in consecutive phases and supported by consecutive IPA Programmes; (e) projects based on in-depth needs assessments; (f) projects that use local experts; and (g) national ownership and political support. These factors were not necessarily given in any particular order of importance or perceived causality.

In general, the twinning instrument continues to be the preferred implementation modality for all transposition or legal approximation-related projects since the relevant expertise is to be found in matching institutions in the Member States. The relevance of twinning is set to further increase with the imminent accession of Croatia to the EU. National authorities generally prefer to receive assistance from other countries' administrations with hands-on experience regarding the issues that Croatia itself will have to face upon and soon after accession.

On-site visits confirmed that twinning remains a common project implementation modality, especially when it comes to capacity building for newly established institutions and in supporting systemic and structural reforms. This is also confirmed by the data that show an increase in the recourse to twinning, which has grown from 10-20% of the total under PHARE, to 15-35% under IPA.

2.3.1 Impact and Sustainability

Genuine judicial reform requires inter-institutional and inter-sectoral cooperation. Effectiveness is thus highly dependent on the commitment and ownership of the range of actors involved in the process. While useful Outputs are assumed to be delivered, the translation of these into medium-term Outcomes and longer-term Impact will need the stakeholders' ownership across a series of sequenced actions. Proper evaluation of the impact of the projects implemented in the Justice sector encounters some practical difficulties as many activities are quite recent so the longer-term results can only be expected some time into the future. However, the legislative framework was significantly reformed and concrete effects are already visible as regards the reduction of backlog of criminal cases⁴¹ but the number of pending enforcement cases, including old enforcement cases, increased in 2010 and with only a slight decline in the first quarter of 2011. On the other hand few tangible results have been identified as a result of the rationalization of the court system, the reform of the selection of judges and prosecutors, the new training system, full deployment of the integrated case management system, etc. What can be seen as some first Outputs and hopeful signs that these will lead to more systemic and systematic changes down the road.

The review of the impact indicators formulated in the Project Fiches for PHARE 2005-06 and IPA 2007 shows that in about 40% of cases impact is measurable in terms of compliance with specific negotiations requirements⁴². Prospects for impact are generally positive, with some qualifications.

⁴¹ Progress Report 2011: A reduction of 10.6 % was reported at end 2010. In particular, the impact of the EU project on Misdemeanour case management significantly exceeded expectations.

⁴² 2009 Country Program Interim Evaluation of EU Pre-accession Assistance to Croatia, 12 March 2010. The analysis is based on the review of 75 indicators, and it does not include some 10 considered not appropriately

Actions aimed at achieving alignment with specific *acquis* requirements sometimes provided a decisive contribution to the opening or closing of negotiations in certain chapters.

For more general project objectives linked to institutional development or similar, the indicators of achievement are not always formulated in a proper way, which makes impact assessment difficult to conduct. Secondly, the link between project objectives and corresponding sectoral strategies is not always straightforward, which weakens the ability to attribute changes at the Impact/Outcome levels to the various project results. Finally, there is a difficulty of measuring change since relevant baseline data are often missing – not a problem limited to Rule of Law or IPA funding, of course, but none the less an issue when it comes to tracking performance over time.⁴³ Occasionally, follow-up missions are organized for twinning projects some months after completion, with the aim of verifying the concrete effects produced and provide suggestions for the sustainability of results. As far as possible, it appears advisable to extend the use of such or similar practices to a larger share of interventions.

Prospects for the sustainability of results are mixed. Regarding *institutional development* – the changes to formal frameworks such as laws, institutional mandates and responsibilities – these tend to be quite sustainable since they have passed through the appropriate political process of being debated and approved. *Organisational development*, however – building a credible police force, an efficient court system and so forth – is a very different matter. One key problem is adequate staffing and retention of skilled staff in the beneficiary institutions since many institutions experience a constant outflow of qualified staff, often trained with EU assistance. Another sustainability challenge is the level of financial allocations from the state budget to ensure funding for staff and operations and maintenance of infrastructure and equipment required for the organisation to carry out its core tasks. These concerns are often reflected in conditionalities included in project fiches, but especially when it comes to staffing issues the answers found so far have not been sufficient for addressing the sustainability challenge.

In general, EU projects have a broad and long-term societal objective that goes well beyond simple compliance with the *acquis*.⁴⁴ In particular, the majority of projects' planned outcomes involve not only the appropriation but also the proper and concrete implementation of the *acquis* adopted, before and after accession. In several other cases the initiatives financed are aimed at inducing a permanent improvement of administrative capacities of targeted institutions with a special focus on bodies to be later involved in the management of structural funds. In all these cases, sustainability issues can be essentially of two types:

formulated. In few cases the impact indicator is explicitly the 'provisional closing of the chapter' as in the case of some projects in the field of Taxation, SME, Regional Policy etc.

⁴³ Some valid indications in this respect are provided in the Strategic Development Framework 2006 – 2013, but only for matters related to competitiveness. A specific system for the monitoring of SDF achievements is not yet in place. Sectoral strategies may also contain baseline data which are usually not recalled in PF when establishing impact indicators.

⁴⁴ Only in a tiny minority of cases the projects' planned outcomes relate only to the adoption of legislative or policy documents. In these cases the sustainability is ensured by the formal transposition acts. This regards only 2% of the 375 expected outcomes and impacts indicators established for PHARE 2005-06 and IPA 2007-08 projects.

- Ensure the enforcement of the acquis and the concrete implementation of plans, strategies and recommendations elaborated in the framework of technical assistance projects, which may entail institutional re-structuring, review of processes, the establishment of new facilities and the like.
- Ensure an appropriate use of the outputs of investment projects, e.g. facilities, equipment etc., and - when applicable - the production of the expected catalytic effects (e.g. in the case of pilot projects).

The prospects for sustainability of outcomes depend essentially on three factors, namely:

- The takeover of project outcomes and objectives by beneficiaries and stakeholders;
- The allocation of sufficient budget resources for the running of the organisation;
- Adequate staffing in both quantitative and qualitative terms.

The issue of ownership may be divided in two segments: (i) Integrated into and part of national strategies and programs - political level ownership, (ii) developed and approved in collaboration with those who are actually to implement the reforms – operational ownership.

Beneficiaries' take-over of assistance results. One of the key to sustainability of institutional building is the internalization of achieved results within the structures and operations of the beneficiary institution, and the continuous use of the results. A crucial factor in this respect is the embedding of assistance in the country's strategies, and action plans established at the general and the sectoral levels. However, the issue of ownership can not only be related to its embedding in the country strategies. More crucial for the impact and sustainability is the ownership from the professionals and practitioners within the beneficiary institutions.

Projects designed and implemented within the framework of national strategies have undoubtedly greater chances of generating results that are properly endorsed by the beneficiaries, e.g. determining a permanent institutional or organizational change, and/or ensuring an appropriate enforcement of transposed EU acquis. However, the issue of ownership has been mentioned by several interlocutors as an issue that needs to be looked at more carefully. A Project Implementation Unit (PIU) situated with the Ministry of Justice may not represent ownership by all the actors that are involved in the program if they themselves are not situated inside the Ministry. Several beneficiary bodies noted this as a dilemma, and judges also pointed to examples where they had not been sufficiently involved in project planning and implementation. There was also a sense of lack of ownership by the MRDEUF whose role seems limited to passing proposal from beneficiaries to EC.

In many instances, the *Sustainability* of outcomes is subject to the financing of the follow up. In the majority of cases the financial sustainability of projects after their completion depend essentially on State budget allocations, but sometimes further EU financing or other donors' assistance is deemed necessary, e.g. for the multi-phase initiatives in the field of border management. Information on State budget allocations available is basically provided by the National Program for the Accession of the Republic of Croatia into the European Union (NPAEU). The planned budget for financing activities and programs necessary to meet membership requirements are prepared by the Ministry of Finance in co-operation with the Ministry of Foreign Affairs and European Integration and the other State administration bodies (CPIE 2010). Allocations cover two-year periods and are broken

down by *acquis* chapters and within each chapter by beneficiary and specific activity. In general there has not been problems ensuring the co-financing contribution in Croatia, and the resources allocated to specific actions linked to EU assistance are clearly visible though the level of detail could be better. More importantly, state budget allocations are seldom explicitly reported in projects' monitoring reports thus in some cases raising questions on the appropriateness of the provisions adopted to this end.

But a concern that has been raised is if the state is allocating sufficient funds to the field of Rule of Law. State budget funds for 2008-09 amounted to some € 830 million. Allocations to sectors like environment, agriculture, FVP policies and in general the economic and social cohesion policy are considerable while the judiciary has been accorded an allocation of less than 0.1% in the NPAEU. This stands in contrast to figures from the Multi-annual Indicative Financial Framework (MIF) for IPA for the years 2011-2013. Croatia is to receive an indicative allocation of about € 479 million of pre-accession funds, and of this the Justice and Home Affairs and Fundamental Rights allocation will be increased 15%, to € 64.0 million in 2013. Accordingly, some concerns were voiced about the financial sustainability of some projects in this area⁴⁵.

The Program of the Government of the Republic of Croatia for assumption and implementation of the *acquis communautaire* from 2010 includes the separation of the JA from the Ministry of Justice. This is based on the new Act that has established the JA an institution in the proposed budget of the Government for 2010. A budget of HRK 28.8 million (E) will be earmarked for the JA. Out of this amount, HRK 10 million is to be spent on the renovation and equipping of the State School for Judicial Officials. Additional funds have been indicated for new employments and trainings. Assistance by bilateral donors has also been agreed for further reinforce the prospects for sustainability.

Sustainability of results is potentially jeopardized by serious problems with staffing and staff retention in the judiciary and in the administration, as pointed to before. This regards especially projects aimed at building/strengthening beneficiaries' capacity, whose success involves the recruitment of new staff. In this case, the shortage of staff is a stumbling block for the proper execution of the project and may ultimately determine its failure. Issues with the retention of trained staff may de facto frustrate the efforts deployed. Interlocutors pointed to the problem of staff rotation within MoJ that led to reduced impact as trained staff may be leaving. The same problem has been indicated in relation to the lack of capacity in the CFCA due to the fluctuation of the employees. Well trained people are leaving to work for private sector or international organizations.

3. Fight Against Organised Crime and Corruption

In Croatia, the fight against organised crime and corruption are led by USKOK, the Office for Combating Corruption and Organised Crime. USKOK is part of the prosecution office and support to USKOK is therefore often included as part of justice sector reforms. Besides the USKOK, the

⁴⁵ For instance, it is not clear whether the allocation for the deployment of the integrated case management system being after the PHARE 06 project is completed or not; similarly, there are reportedly no clear indications on the sustainability of the Judicial Academy promoted through a PHARE 05 project.

Ministry of the Interior (MoI) is a national co-ordinating body for developing a strategic document pertaining to the suppression of organised crime in its entirety (Program of the Government, 2010).

In regard to the developments and reforms in this sector it is also difficult to identify strategic priorities and to follow the achievements only by using the specific projects since the two aspects are normally linked. All projects for establishing the National Criminal Intelligence System (NCIS), connection of the data bases of different institutions, creating the National Police Office for the Fight against Corruption and Organised Crime (PNUSKOK), reforming the criminal procedure legislation and independence of the judiciary are interconnected with increasing legislative and institutional capacity for the fight against organized crime and corruption.

Reforms have moved fairly slowly. In the PR of December 2008, the EU applauded Croatia's new strategy and a new action plan against corruption, as well as the indictments issued by the USKOK. At the same time it noted that the number of actual prosecutions remains low while the problem itself remained enormous. The report stated that "*some progress*" had been made against organized crime in Croatia while also noting that the police "*need to become more effective in the fight against corruption and organized crime.*"

The PR 2009 used the same language of "some progress has been made" in the area of organised crime. PNUSKOK was established within the General Police Directorate and became operational in February 2009. It also comprises four regional centres in Zagreb, Split, Osijek and Rijeka. Based on the National Threat Assessment, the Ministry of the Interior (MoI) developed a Plan of Priorities in the Suppression of Organised Crime, which it is implementing together with USKOK. Special chambers for dealing with organised crime and corruption cases (USKOK cases) have been set up in the four County Courts in Zagreb, Split, Osijek and Rijeka, though at least for the time being the 60 judges that will work in these chambers have not been relieved of their previous duties. This suggests that the increased focus on cases of organised crime and corruption may come at the expense of other categories of cases.

With the PR 2011, progress in the area of the fight against corruption and organized crime is noted: the operational capacity of the USKOK has been improved and the PNUSOK is fully staffed. Interagency cooperation has improved, including through the implementation of memoranda of understanding, which has contributed to improved financial expertise. The new Police Act was adopted in March 2011. It aimed at making the police a more professional service and introduced measures to reduce the influence of politics.

Overall, substantial progress has been reported regarding the fight against corruption as the law enforcement bodies are addressing the issue. Referring to a number of mid and high- level corruption cases which are currently being investigated or where indictments have been issued, the track record of effective handling of organised crime and corruption cases needs to continue to be built, however, because while a number of cases have been taken to court, few have led to final convictions. This is seen especially as an issue when it comes to high level corruption, local level corruption and cases related to public procurement and the judiciary. Good progress can also be reported in the fight against organised crime and against drugs.

There has been continuing progress with the application of the new Criminal Procedure Code (CPC), which was further fine-tuned in July 2011. Applied to organised crime and corruption cases

since 2009, the new criminal procedure has accelerated the investigation and the prosecution stages, with better cooperation between the police and prosecution services leading to more indictments. Preparations for the enforcement of the new code for all other criminal cases from September 2011 has continued.

3.1 Assistance Provided

The CARDS programme was mainly dedicated to capacity building. The following are projects that were implemented projects in this sector:

- UN Office on Drugs and Crime (UNODC) regional Project: *Enhancing Operational Capacity to Investigate and Disrupt Human Trafficking Activities in the Western Balkans*, aimed at strengthening the co-operation of the Mol and the Croatian judiciary with the UNODC, in terms of strengthening the administrative capacity of the police and the judiciary in the area of the suppression of trafficking in persons;
- International Centre for Migration Policy Development (ICMPD) regional Project: *Management of Data and Information Collection in the Field of Suppression of Trafficking in Persons*, implemented by the Government Office for Human Rights and Mol, which includes building databases of victims and perpetrators of trafficking in persons;
- ICMPD Project: *Support to the Republic of Croatia in the Suppression of Trafficking in Persons*, implemented in 2009/2010 in co-operation with the Government Office for Human Rights, the State Inspectorate and the SAO;
- EU Project: *Ilaeira*, conducted continuously by the police of the Greece in co-operation with TAIEX, pertaining to the strengthening of capacities and communication channels for the purpose of improving regional co-operation in the suppression of trafficking in persons; the Pericles Programme, aimed at protecting the euro from being counterfeited co-ordinated by the European Anti-Fraud Office (OLAF), and its implementation will continue until 2013.

IPA programmes supported several projects with a view to developing co-operation at regional level: Coordination in the pre-investigative procedure, aimed at enhancing the State Attorney's Office's (SAO) co-operation with the public prosecution offices of other countries in the fight against organized crime.⁴⁶ The SAO has an active role in the Prosecutors' Network in South-East Europe, the contact person is the deputy director of the USKOK. In 2010, USKOK implemented the IPA 2007 project, USKOK Capacity Strengthening, a two-year project with a budget of € 1million, with a twinning partner from Germany.

Development of a National Criminal Intelligence System (NCIS) has been one of the activities supported by different programs through the years (CARDS 2002, 2003). By setting up the NCIS based on the model of police work guided by criminal intelligence information, important prerequisites will be in place for the proactive approach of the police, which is a precondition for the

⁴⁶ Croatia has ratified the Agreement with Eurojust which enhanced the international co-operation of the SAO in the fight against organized crime in 2010, and by virtue of a Decision of the Croatian Government, one deputy state attorney of the Republic of Croatia has been appointed liaison prosecution representative of the Republic of Croatia in Eurojust's headquarters in The Hague.

successful fight against transnational organized crime and terrorism. The Criminal Police Directorate has also implemented the MATRA project for the Criminal Police Reorganization (2009, 2010) aiming to reorganize the criminal police according to the European model, which includes the strengthening of the PNUSKOK both at the level of strategic and operational action.

CARDS program supported projects have been mentioned above in section 3.1.

Support through IPA Component I has not been substantial in regard to the fight against organized crime and corruption. The projects provided in the list (from the Inception Report list) show a total of nearly € 11 million worth of support for anticorruption activities, of which half was support to the USKOK and other public prosecutors' offices, and the other half for the civil society. The University of Zagreb, Transparency International Croatia, Partnership for Social Development, Association for the Promotion of Human Rights, media freedom CENSORSHIP PLUS have been supported with € 1 million in all. The biggest amount of € 5.5 million dedicated to NGO anticorruption projects have been managed by the Government Office for Cooperation with NGOs.

Table F.3: IPA projects 2007 - 2011 focusing on the Organized crime and corruption

	IPA	Project	Sector	€
1	2007	Strengthening Capacities of USKOK	Anticorruption	1,000,000
2	2008	Strengthening anti-corruption activities of the Customs Admin	Anticorruption	230,000
3	2008	Strengthening Tax Administration in fight against corruption	Anticorruption	230,000
4	2008	Support to the Reform of Criminal Proceedings	Justice Reform	1,100,000
5	2008	Support to the Reform of Criminal Proceedings	Justice Reform	800,000
6	2008	Enhancing CSOs in monitoring implementation of EU Acquis in fight against corruption and overall transparency, accountability of public administration bodies	Anticorruption	n.a.
7	2008	Anti-corruption response to implementation of Procurement Policies	Anticorruption	255,981
8	2008	Active civil society - guarantee of the real reforms	Anticorruption	199,940
9	2008	Cooperation, Accountability and Transparency against corruption	Anticorruption	213,597
10	2008	Improving Capacity of University System to Create a Framework for battling Discrimination and Corruption to improve Academic Integrity	Anticorruption	279,378
11	2008	Civil Society + Public Institutions increasing Transparency with Elaboration, Implementation of Conflict of Interest Prevention Policy	Anticorruption	243,159
12-13	2009	Fighting sexual exploitation and sexual abuse of children and on Police assistance to vulnerable crime victims (2 projects)	Fundamental Rights	609,000 760,000
14	2009	Supply of IT Equipment for police stations	Police reform	1,500,000
15	2009	Strengthening Capacities of Gov't Office for Cooperation with NGOs to build effective CSO partnerships to fight Corruption	Justice Reform	46,890
16	2009	Fighting Sexual Exploitation and Sexual Abuse of Children and on Police Assistance to Vulnerable Crime Victims	Fundamental Rights	1,369,000
17	2010	Assisting Civil Society Organisations in developing, implementing and monitoring public and Acquis related policies	Anticorruption	2,400,000
18	2010	Supporting CSOs monitoring, promoting transparency, effectiveness, accountability and inclusiveness of public administration	Anticorruption	560,000
19	2011	Support to Civil Society in Building Transparency and Open Governance and in Sustainable Use of Protected Areas	Anticorruption	2,860,000
20	2011	Strengthening capacities of the Mol to combat computer crime	Cybercrime	665,000
21	2011	Restoration and Equipping premises, PNUSKOK Osijek; Rijeka	Anticorruption	1,793,500
22	2012	Strengthening Capacity and Efficiency of SAO/USKOK	Judiciary	3,300,000

Under MIPD 2009-2011 Component I where the core activity is Institution Building, the priorities as regards the political area (first area of intervention under this MIPD) which were envisaged in the previous MIPD 2008-2010 were maintained: support in the fields of judiciary including fight against organised crime, public administration reform, fight against corruption, de-mining, promoting respect for and protection of minorities as well as related local community development.

In addition police projects for Capacity Building in the field of fight against sexual exploitation and sexual abuse of children and on Police assistance to vulnerable crime victims (as part of the fundamental right projects supported with 3 projects from the IPA 2009 programme Component I) as well as the Supply of IT Equipment for police stations as part of the police reform have been supported with total about € 4.9 million. However, IPA Component II funds are available to support, as appropriate, the participation in the relevant Structural Funds trans-national programmes (and, as appropriate, interregional programmes) where Croatia is eligible

Total amount for the CARDS, PHARE and IPA project of the Ministry of Interior is € 86.7 million out of which Supply € 40.3 million, twinning € 15.4 million, technical assistance € 3 million, works € 6.4 million and regional CARDS and IPA projects € 21.6 million (figures rounded off).

Table F.4: 2007-2011 IPA Projects related to organized crime and corruption, in Mol

IPA	Title	Budget	Status
2007	Combating Drugs Trafficking and abuse	2,200,000 IPA 1,900,000	ongoing
2009	Capacity building in the field of fight against sexual exploitation and sexual abuse of children and on Police assistance to vulnerable crime victims.	1,613,000 IPA 1,369,000 E ⁴⁷	Ongoing
2011	Strengthening capacities of the Ministry of the Interior to combat computer crime	700,000 IPA 665,000, 00	Nominated and preliminarily approved
2011	Restoration and Equipping of the premises for PNUSKOK Osijek and Rijeka	2,110,000 E IPA 1,793,500 E	Nominated and preliminarily approved EC
Multi-beneficiary IPA 2008	Police Cooperation: Fight against Organized crime, in particular illicit drug trafficking and the prevention of terrorism	2,500,000 E	Ongoing
Multi-beneficiary IPA 2010	Regional Cooperation in Criminal Justice: strengthening capacities for the fight against cybercrime	2,777,778 E	Ongoing

Project planning and identification has been primarily guided by the negotiations. In the beginning projects were related to the opening benchmarks and then, as mentioned previously, the attention could be directed towards the closing benchmarks. As presented in the table F.5 the state is allocating matching funds for all projects which is strengthening both ownership and sustainability.

Overall, IPA and EC support is perceived as positive: Phare 2005 made major contributions and specifically contributed to the way the Ministry of the Interior is managed. IPA supported the field first and foremost through the enhanced border support.

According to the interlocutors there is clear link between the Strategic documents/needs and project priorities. Projects are developed by the professionals and as from 2011 they are mainly supply projects. On the basis of established criteria the MRDEUF decides which project will be supported and it happen that sometime beneficiary did not agree with the decision. In their opinion the projects were not all the time meeting the strategic priorities and some of the main reform issues such as the police reform remained insufficiently addressed in regard to its impartiality and applying principles of merits and professional carrier. However, final say in the decision making process lays at the EC.

3.2 Results Achieved

As stated in the PR 2011 good progress has been reported in the fight against organized crime and drugs. There has been continuing progress with the application of the new CPC. Additional police resources were deployed to deal with the stricter deadlines for interviewing suspects. However, some of these deadlines need to be revised slightly in order to facilitate the work of the police and prosecutors.

⁴⁷ Indicated projects are also presented in the table provided by the EC for the IR

The domestic legal anti-corruption framework has been further improved, including through legislative fine-tuning of the law on the USKOK extending its competence to tax fraud cases and introducing a more transparent mechanism to control the dismissal by the SA of criminal reports. Confiscation of pecuniary gains from crime increased significantly, albeit from a low base. The adoption of a new act on the procedure of seizure and confiscation of the proceeds of crime and misdemeanours enables effective management of confiscated assets.

The Program of the Government of the Republic of Croatia for assumption and implementation of the *acquis communautaire* from January 2010 is giving strong emphasis to the further development of a criminal intelligence system and to the implementation of a NCIS in all law-enforcement agencies, which will raise interagency co-operation in the fight against crime to a new level.

The CPIE Final report analyses subareas (i) judicial system and (ii) anti-corruption policy, two sub-areas that refer to the Political Criterion *Democracy and the Rule of Law*. The accession priorities in the sub-area (ii) are as follows (accession Partnership 2008):

<p>B - Anti-corruption Policy</p>	<p><i>B1) Continue to develop and implement Codes of Conduct/Ethics for officials and elected representatives as well as action plans to prevent corruption in the relevant law enforcement agencies (border police, police, customs, judiciary) and other public sector institutions and agencies; fully address corruption in public procurement. Establish specialist units for combating corruption,</i></p> <p><i>B2) ensure that the legal framework for tackling corruption is uniformly implemented and enforced including through the use of adequate statistics,</i></p> <p><i>B3) take concrete actions to raise public awareness of corruption as a serious criminal offence,</i></p> <p><i>B4) ensure full cooperation of State authorities with the Office for Prevention of Corruption and Organized crime.</i></p>
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Among the above priorities, the AP attributes special importance to the updating and implementation of the strategy and action plans for the judicial reform. Overall, ten projects have been financed in these sub-areas, seven concerning the Judicial system and three the Anti-corruption policy⁴⁸. The MoJ is the beneficiary of all projects, with the only exception of a small anti-corruption initiative financed by the MoI as a PPF. Altogether, projects' value amounts to some € 15.3 million, some 5-6% of which is financed through the State budget.

The Report concludes: “*Although the anti-corruption policy was a key priority for accession, it received a comparatively much smaller share of assistance funds. In the period under consideration only IPA07 included interventions in this area*”⁴⁹. The two projects financed are tightly interrelated and have the objective of ensuring the appropriate implementation of the national Anti-corruption Strategy and its Action Plan, by - among other issues - fostering the capacity of USKOK and establishing a monitoring system on the concrete implementation of the strategy. Hence, assistance in this area did not contribute (for evident timing reasons) to the fulfilment of opening benchmark, but could be helpful in the future closing of the chapter.

⁴⁸ Fighting corruption is in reality a cross-cutting objective that is addressed, though not as the main topic, also by other projects, especially those related to public procurement.

⁴⁹ In addition a small project was financed to MoI under the PPF facility.

Interlocutors have identified the MIPD and the process for defining IPA priorities in line with the EU Integration priorities to be the success factor. It has been strengthened by ownership through deciding on priorities and drafting projects; ownership as illustrated by the important financial support received by MoI and ownership and sustainability ensured by participation from the state budget. Sustained support from EUD via several consecutive projects for different programs is another success factor and it has been the incentive for the MoI to set up a project implementation team that could support and monitor project implementation on a continuous basis. Continued presence of international experts located within the MoI and working closely with local police experts has contributed to ensuring the impact.

On the side of criticisms interlocutor considers that CFCA is necessary agency but is cumbersome and bureaucratic leading to delays. The evaluation committee of CFCA is source of delays (requests for an external expert is not always easy to find – it has been proposed that the CFCA should set up a pool of evaluation experts on LE). The process for deciding on priorities is not clear pointing that some projects like PNUSKOK were not proposed by the MoI but the proposal came from the EUD.

3.3 Findings and Conclusions

The objectives of EU support related to organized crime are part of the support to the field of Justice, Home Affairs and Fundamental Rights. The first sentence for defining sectoral objectives in the MIPD 2011-2013 confirms that these objectives are consistent with the Enlargement Strategy's key challenge of strengthening the judiciary and the fight against organised crime, as well as with the "Europe 2020" strategy of reinforcing the rule of law to improve conditions for the business environment and increase growth and competitiveness.

The strategic objective in the field includes continuing the implementation of Integrated Border Management (IBM) Action Plan and Schengen Action Plan; to support Croatia's efforts to fight organized crime and corruption – including the prevention of corruption – money laundering and trafficking of human beings and drugs.

Box F.2: Internal Monitoring Findings

The examples below show the kinds of internal assessments that Croatia's own system provides regarding some of the Rule of Law interventions that have received EU support.

1. *"Strengthening Anti-Corruption Inter-Agency Co-operation"* (IPA 2007): Total Allocation: € 2.55 million – EU Contribution: € 2.5 million – national co-financing: € 62,000. Main Beneficiary Institution: Ministry of Justice, Twinning component, Both service components have shown satisfactory performance during the monitoring period. The implementation of the service component (anti-corruption central data base) is expected to be finished by 21 March 2011 and the newly developed anti-corruption central data base will have to be tested and functional, with selected users trained by the end of that time. Related to implementation of National Anti-Corruption Strategy, accompanying Action Plan and inter-agency cooperation at national and local levels.

2. *"Strengthening Capacities of USKOK"* (IPA 2007): Both twinning and service components are in the implementation. Twinning activities are mostly implemented according to the plan. Some of them have been rescheduled but without jeopardizing the final results. The service component is in the final stage and planned results are almost accomplished. All contracts within the supply component have been contracted (98% of originally planned allocation has been contracted) and equipment was delivered during the last monitoring period. For the Lot 2 final acceptance was issued in December 2010. The project has been a subject of the audit performed by the Court of Auditors and was rated very high.

Project objective was created according to a few **strategic documents**: Action Plan - Judicial Reform Strategy (May 2008) Croatia, by which the need of establishment of four USKOK Departments at County courts in Zagreb, Split, Osijek and Rijeka as well as the whole “USKOK vertical” at municipal courts; Council Decision (2008/119/EC) on the principles, priorities and conditions contained in the Accession Partnership with Croatia and repealing Decision 2006/145/EC in which one of the key priorities was to update and accelerate implementation of the anti-corruption strategy and related action plans and ensure more coordinated and proactive efforts to prevent, detect and effectively prosecute corruption, especially at high level; - Croatia 2009 PR in which it was stipulated the need for USKOK and PNUSKOK to be improved in their expertise on financial issues as well as further enhance of their cooperation with other bodies. The main beneficiary of the project is USKOK with the involvement of other LEAs – Ministry of Interior – PNUSKOK, Police Academy, Ministry of Finance - Tax Administration, Customs Administration, Foreign Exchange Inspectorate, Financial Investigation Unit, Ministry of Economy, Labour and Entrepreneurship - Public Procurement Office etc.

Indicators to assess the impact of EU support may include, *inter alia*:

- Number of successful prosecutions and final convictions for cases of organized crime, corruption, money laundering and trafficking of human beings and narcotics;
- Increased amounts of proceeds of crime recovered;
- Strengthened capacity of law enforcement institutions, including improved inter-agency and international cooperation;
- Strengthened IBM and prevention of illegal migration by creating effective systems for management of asylum, illegal migration and borders.

To draw a conclusion in relation to the relevance of projects supported by the IPA Component I through 2007–2011 only on the basis of the titles of the projects is not sufficient. To be able to make any decision it will be better to refer to the relevance and the impact of the EU support in the sub sector of the fight against organized crime and corruption in general. Projects related to strengthening the capacity and efficiency in the fight against organized crime and corruption are cross sector multi-beneficiary projects and the relevance can be analysed only via a cross cutting approach.

Projects that have been implemented in the sector of Justice and subsector of anti-corruption show a high degree of **relevance**, in the sense that they are well aligned with the multiple needs of accession and the strategic objective. In some cases, assistance specifically addressed negotiations requirements for specific *acquis* chapters i.e. opening and closing ‘benchmarks’ for the chapter 23 and 24. In remaining cases, assistance was directed to the strengthening of the cross border cooperation, applying of the integrated border management, cross border cooperation in criminal matters and border security.

The process for defining IPA priorities is based on identifying projects that are in line with the EU Integration priorities and the importance of obtaining sustained support from the EU for core activities (consecutive projects). Similar concerns drive the setting up of project implementation units/ team that can support and monitor project implementation on a continuous basis. Twinning assistance is preferred due to the close and continuous cooperation between international experts and national staff appointed to work on specific projects, where the training aspect has been stressed in order to ensure sustainable impact.

A key document is the Government's **Strategic Development Framework** (SDF) for 2006-2013. The full implementation of SDF would ensure the medium-term sustainability of the results obtained in various areas of the accession process. A number of interventions are also linked to specific sectoral strategies⁵⁰, such as the **Judicial Reform Strategy** and the **Anti-corruption Strategy**⁵¹ and related action plans as regards the Political Criteria, as well as various strategies.

Stakeholders acknowledge the important impact of EC assistance, though noting the problems such as long preparation periods that may lead to changes of project activities and results frameworks. The complex rules with regards to project modification and the sometimes exaggerated detail of technical specifications may reduce the efficiency of the overall project. Perhaps a larger problem was the experience that political support for projects weakens if the preparatory phase becomes too long: since projects then are less likely to produce visible results within the time horizon that drives a politician, it was claimed that the interest and commitment could weaken and for sensitive projects in particular this could become a challenge.

While the technical preparations of projects came under criticisms, a number of stakeholders noted the importance of the profile and quality of the experts provided. As pointed to before, the experience has been that a good expert interested and committed to the task and willing and able to adjust to the local circumstances could make a big difference even if the formal design of the project had weaknesses. This made it all the more important that Croatian institutions were given a strong say in the selection and performance assessment of external experts, and there was in particular a view that if local authorities felt an expert did not deliver, that this should be respected. Claims were made that local authorities' views on lack of performance on certain occasions was not taken sufficiently seriously and thus replacement of non-performing experts became unnecessarily problematic, to the detriment of project results. – This team has of course not had possibilities for entering into any kind of assessment of staffing situations mentioned and thus have no views on the examples provided. But to the extent that key national actors experience management of external expertise as a potential stumbling block for results achievements, this issue clearly should be looked into. The differences between how expert contracts under (institutional) twinning and (consultancy) technical assistance projects are formulated may be one aspect to review.

4. Looking Ahead

When looking ahead regarding how EC resources for Rule of Law can be better programmed, the team has relied on various sources of information, as provided below.

⁵⁰ In many cases prepared or updated with the contribution of EU assistance. See Section 5.2 on Relevance.

⁵¹ The IPA 07 project on Inter-agency cooperation aims, among other issues, at helping the monitoring of this action plan's implementation.

4.1 Relevant Studies and Evaluations

The two studies reviewed here are:

- Ad Hoc Evaluation of the EU Pre-Accession Instrument CARDS (ECOTEC Research and Consulting Ltd December 2007)
- 2009 Country Program Interim Evaluation of EU Pre-accession Assistance to Croatia (Economisti Associati, March 2010): The results of this have been presented above.

4.1.1 Ad Hoc Evaluation of the CARDS Programme

The *ad hoc* study, published in December 2007, looked at what the study termed three sectors: Social sector and civil society; Internal Market, Competition and Agriculture; Justice and Home Affairs and Other. This ad-hoc evaluation report covers decentralised⁵² CARDS assistance from the 2003 and 2004 national programmes. There is no co-financing element to this assistance.⁵³ The report examines the progress of the programmes towards the objectives stated in the formal programming documents, i.e. Financing Memoranda, Project Fiches, etc. It is intended to provide strategic and operational management information for the Commission Services, the Joint Monitoring Committee and beneficiaries. It draws conclusions and puts forward recommendations and provides a judgement on sectoral and sub-sectoral performance. All projects are being implemented under the Decentralised Implementation System. 12 are from the 2003 and 4 from the 2004 CARDS programmes. The total amount of assistance evaluated in the report is € 20.3 million. The report has divided the assistance into 4 clusters. All assistance is in line with the strategic objectives of the European Commission's Country Strategy Paper 2000-2006 for Croatia and Multi-annual Indicative Programmes 2002-4, as well as priorities outlined in the Croatian Government's "Preliminary Assessment for Introducing Elements of Pre-Accession Strategy to CARDS".

According to the Sectoral conclusions the overall performance of the CARDS assistance evaluated is mixed. Relevance of assistance was hampered by weaknesses in project design but subsequent project changes improved the prospects for achievement of planned outputs and good results. A range of factors both internal and external to the programme environment represent potential barriers to the impact and sustainability of these interventions, however there is sufficient reason to expect the assistance to deliver useful and sustainable results. The overall rating is the range of "barely satisfactory" and "satisfactory".

⁵² All projects selected for evaluation are being implemented under the decentralised implementation system (DIS). Previous CARDS assistance (as well as some CARDS 2003 projects) has been implemented under a centralised regime

⁵³ Although no co-financing requirements are explicitly stipulated in either Council Regulation (EC) No 2666/2000 on the CARDS instrument or the annual financing agreements article 6 of the former states that "Community financing may be used for co-financing, which should be sought whenever feasible." In this respect there have been cases of implicit parallel co-financing from national public funds such as works at border crossings and for mandatory joint co-financing by the grant beneficiaries from various sources.

Table F.5: Rating of the various CARDS programmes by DAC dimension

Criterion Cluster	Relevance	Efficiency	Effectiveness	Impact	Sustainability	Overall
Social	0	1	1	0	0	BS
Internal Market, Competition and Agriculture	1	0	1	1	1	S
Justice and Home Affairs	1	0	1	1	0	S
Other	0	0	1	0	-1	BS
Total aggregate rating	1	0	1	1	0	BS/S
Verbal rating	S	BS	S	S	BS	
Overall, the clusters are rated to be in the range of Barely Satisfactory and Satisfactory						

In the Justice & Home Affairs cluster, support targets a range of accession priorities. Assistance to the development of a national border management information system is highly relevant to Croatia’s efforts to participate in the Schengen Agreement. Twinning assistance in *Combating Money Laundering* is relevant both to Croatia’s international commitments in this area and beneficiary needs, although the scope of activities at local level is not as extensive as it could be. *Criminal Intelligence II* fits in with strategic objectives of the Croatian authorities in this field and supports the introduction of EU best practice in the area of intelligence-led policing. However it is hindered by its rather ambitious aims and its positioning at a relatively junior level within the Ministry of Interior. Although *Court Reform* supports the wider process of judicial transformation and targets a key weakness in the sector, the lack of key legislation and functioning Information Technology systems as well as limited beneficiary capacity has undermined what would otherwise be a highly relevant intervention.

Table F.6: Judiciary and Home Affairs projects, CARDS 2003-2004

Cluster	Monitoring Sectors Covered	Projects evaluated	CARDS (M€)	National (M€)
Justice and Home Affairs	Justice and Home Affairs	Border Management II Criminal Intelligence II Combating Money Laundering Court Reform	7.75	0

Source: ECOTEC Research and Consulting., p. 16.

The four projects were centred on the Border Management II, Criminal Intelligence II, Combating Money Laundering and Court Reform.

Relevance: Although the project design is simple (four twinning components plus one supply contract) the project faces a number of risks that are largely beyond the control of the project team and which are likely to have a significant influence on the impact and sustainability of the assistance. The most important of these are the absence of legislation that will facilitate the court

rationalisation process and the lack of a functional ICMS with which the Information Technology and twinning components interface. Also a pre-condition in the fiche (sufficient staff capacity at the PIU and beneficiary institutions for project management, participation and monitoring) has not been enforced with any rigour, as a result of which the project has been hampered by a lack of counterparts for the twinning experts, staff turnover and lack of adequate strategic management, particularly in relation to the Information Technology components. It is in fact questionable whether the Croatian side does indeed have the capacity to fully benefit from a project of this type.

Relevance is rated **barely satisfactory**.

Efficiency. The four projects in this cluster have mixed efficiency. Delays in start-up and the loss of a supply component in one project, *Combating Money Laundering*, have occurred. In the case of *Court Reform* two of its four components are experiencing significant difficulties. The projects were rated **barely satisfactory** with regards to *Efficiency*, and even **unsatisfactory** for the Court reform project.

Effectiveness. Criminal Intelligence System operation and all key aspects of intelligence-led policing have been evaluated as functional and effectiveness is rated **Satisfactory**. *Combating Money Laundering* has already delivered some important outputs and Effectiveness is rated **highly satisfactory**. The Court reform project has been evaluated as barely satisfactory in regard to the effectiveness due to the serious risk to outputs related to the structure and performance of the Information Technology Section at the MoJ, as well as the ICMS roll-out action plan.

Impact. Despite some notable weaknesses, prospects for impact are, on balance, positive. Although the evaluation has identified some weaknesses, evidence generally indicates that the good outputs emerging from the assistance are likely to result in the impact expected. This is most likely where policy objectives are clear and support for their implementation evident at senior level, or where assistance complements ongoing beneficiary efforts. More complex projects that promote intra-institutional change or wider reform agendas are likely to face greater challenges in delivering impact. Impact of the Criminal Intelligence System operation and *Combating Money Laundering* have been evaluated satisfactory while the Court reform project has been evaluated as unsatisfactory

Sustainability. Prospects for sustainability are mixed. This is due in part to factors that are outside the direct control of the beneficiaries or where those institutions charged with implementing project results are under-resourced. Otherwise, conditions to ensure the future use of investments are generally in place, while staff turnover has been noted in only some institutions. Justice and home affairs project were rated satisfactory (i), barely satisfactory (ii and iii) and unsatisfactory (iv).

Table F.7: Justice and home affairs

Criterion Cluster/Project	Relevance	Efficiency	Effective-ness	Impact	Sustain-ability	Overall rating
Justice and Home Affairs						
Border Management II	1	0	1	1	1	S
Criminal Intelligence II	0	0	1	1	0	BS
Combating Money Laundering	1	0	2	1	0	S
Court Reform	0	-1	0	-1	-1	U
Total for the cluster	1	0	1	1	0	S
Verbal rating	S	BS	S	S	BS	
Overall, this cluster is rated to be Satisfactory						

The JHA has been receiving strong, continued and highly visible political support from the international community – the EC, the World Bank, and important bilaterals. The JHA has also received continuous, long-term and high-level technical assistance in the form of twinning projects. EC support has been part of a larger effort, and since the EC support is so clearly partnered with important efforts of other actors, and in particular is part of a large political push by the international community, it becomes difficult to assess EC funding along the dimensions such as Effectiveness and Sustainability since it is not possible to state if results are because of or despite the way the EC has provided its funding.

One general observation that the evaluation makes is that project design was poor, but “The often weak original designs have been extensively adapted during preparation to ensure the projects remain relevant to the needs of their beneficiaries and address their sectoral objectives” (ECOTEC Research and Consulting Ltd). That is, in a situation of lack of stable and predictable parameters for project execution, flexibility that came from a poorly (vaguely) designed project was an advantage. The conclusion from this is clearly not that the EC should promote poor project design (!) but the point of building in flexibility in a rapidly changing – and somewhat unpredictable – policy environment is worthwhile bearing in mind.

- Support has been long-term and consistent, and thus has contributed to institutional solidity and the development of a positive “corporate culture”.
- High-quality technical staff – senior judges, prosecutors, administrators – important for the organisational development have not been appropriately involved in the process of drafting and implementation of the project activities. This led to lack of operational ownership.

4.2 IPA Assistance: Lessons Learned

When reviewing the existing evaluation reports and views of interlocutors regarding how IPA funds could be programmed, these can be grouped into three dimensions of the activity cycle: the programming of the activities; the implementation; and how results are monitored, reported and

used. When looking ahead, a fourth category of general framework conditions for programming in Croatia has been added.

4.2.1 Programming Financial Assistance

The Ministry of Justice and the Ministry of Interior have been the main beneficiaries of EC support during the last years and have been key to some of most important changes in the sector. But in particular the Ministry of Justice still requires considerable financial and political support in order to ensure sustainability of the achieved reforms.

- The MoJ PIU should be given sufficient number of staff to strengthen project design and implementation processes
- Annual peer reviews could be carried out to ensure independence and quality.

Ensuring sustainability and understand totality of transformational challenges and costs.

International community has supported large-scale changes in formal laws and frameworks. However officials are not properly trained to apply the new laws as intended [Example: Criminal procedure Code, Execution Code). Croatia introduced new courts, new legislative framework, new CMS, new criteria and institutions for selecting/dismissing judges and prosecutors, all at the same time. There is a need to ensure that all these complex changes are fully supported.

- There is a need for continued support to the justice sector in order to ensure the successful completion of the reforms.
- Impact indicators should cover the complete results chain in the sector: production of new frameworks, laws, bylaws and regulations; capacities to investigate, prosecute, judge and incarcerate; actual prosecution of priority cases reflecting accountability of system and equality before the law.

Donor Coordination: There are a number of important international actors involved in addition to the EC, both on the policy and funding sides. The management of this assistance has been coordinated at several levels with cross purpose to increase the efficiency and to avoid the risk of duplication of activity funding. Three factors in particular have led to improved aid coordination and thus enhanced aid effectiveness: the CFCA , (ii) the key institutions, in particular MoI, MoJ, JA, that are core beneficiaries and actors around which a lot of coordination has been arranged, (iii) the Government Office for NGOs which from 2007 manages minimum € 3 million (IPA 2013 € 5.5 million for the NGOs – mechanism for the fight against corruption in the environment).

Matching fund support. Government of Croatia supports civil society projects with matching funds up to 5-10% of the budget. This support is well managed by the Government Office for NGOs and it has proven to be crucial for facilitating development of a self-sustaining civil society.

4.2.2 Implementation of Activities

Accession important. The real possibility of accession is an important factor to encourage reforms. The vast majority of the reforms have been implemented and their sustainability is ensured through different follow up projects, continuous subsequent EU support. Projects implemented in consecutive phases and supported by consecutive IPA Programmes.

Decentralised implementation a challenge. The decentralized implementation system (DIS) for Croatia comes across as being complex to local actors, and is experienced as an important source of delays and inefficiency in the implementation of projects. There are two aspects that can be looked into. The first is if there are ways of simplifying and streamlining the overall system, recognizing that public procurement and contracting will always remain a challenging exercise. The other is to see if the system can be better explained and appropriate training for relevant users of the system implemented. During the visit it was clear that only a few stakeholders fully understand and can explain the current process properly.

Preparation periods sometimes too long. The preparation period between project idea and project implementation is sometimes much too long. One thing is that the overall framework conditions for project implementation may then change considerably, given the constant reforms taking place in Croatia. This may lead to a need for changes to project design and expected results, themselves requiring amendments that may require some time. But such long periods of inaction may also reduce the political commitment by decision makers and even the sense of ownership by project beneficiaries.

Project revisions often inflexible. Changes to project fiches may be time-consuming because of complex rules and procedures, which also is an issue that should be addressed to ensure smooth and continuous implementation.

Strengthen local content? The solid judiciary strategies and the sectoral approach have contributed to reform results. Several actors believe it may be strengthened further by using local experts to a higher extent to work together with international experts. Capacity building and strengthening of the institutions via coordination with other bilateral projects such as TAIEX, MATRA, USAID may be crucial for further strategic planning and application of the reforms.

Role of market studies. On supply contracts, the requirement for a market study has at times caused major delays. The experience has been that a number of companies are not interested in preparing bids on the given specifications if they believe that procurement will only take place after a considerable time lag. This then actually lowers the quality of the procurement process rather than improves it.

CSOs require further capacity development. A number of CSOs are engaged in advocacy and watch dog functions regarding judiciary and administration reform. The Office for NGOs has helped strengthen their voice by coordinating specific programmes at central and local level. Yet civil society is still incipient and will require further capacity development as well as political support. Links to other parts of civil society – knowledge/research centres, labour unions, professional associations, faith-based organisations – could be supported. The requirements for own funding – normally 5-10% - for CSOs to apply for EC funding that is considered too demanding in other countries has been contributed by the State budget provided from State Lottery proceeds. However, procedures, requirements for CSOs to apply for support could be simplified, streamlined.

- **Lessons learned:** Need for flexibility in budgeting of the projects (not identify all details); Simplifying the procedures and reducing the time for reallocating funds; Shortening the procedures for project approval; Simplifying administrative requirements; Improving coordination

(to make a benchmark); Have NGO projects as a priority to improve their role in monitoring and contribute to speed and quality of reforms in all sectors.

4.2.3 Monitoring and Reporting Results

Surprisingly little independent performance tracking. There are no ROM Reports for Croatia and therefore there is no independent project monitoring. Some projects were evaluated in an early phase in the *Country Programme Interim Evaluation (CPIE)* which was an external and independent assessment but managed by Ministry of Regional Development (MRDEUF). Another type of monitoring is the Integrated Monitoring System (IMS) which is performed every six months, but reports are drafted by project managers directly under the authority of the beneficiary authority. These reports are then revised by the Evaluation unit of MRDEUF for endorsement.

The EC may consider an independent external monitoring mechanism based on a more comprehensive results framework.

- The more comprehensive results framework should build on the considerable reporting already taking place by public bodies, CSOs and others, so that it both becomes a framework that several actors can share and contribute to, but also to allow for more rigorous debate with local actors regarding what such a framework needs to contain in order to be useful for locally owned change.

4.3 Looking Ahead

The EU accession process is the main driver of IPA funding. Based on the experiences from the accession dialogue with Bulgaria and Romania and now with Croatia, the Commission has made it clear that chapters 23 and 24 addressing Rule of Law will be the priority areas of attention for the negotiations of candidate countries. Croatia will become member of the EU in July 2013 but it still needs to improve its performance according to the criteria of these two chapters.

In the EC's "Enlargement Strategy and Main Challenges 2011-2012", the Commission notes that "*The enlargement policy has proven to be a powerful tool for societal transformation... Commitment, conditionality and credibility have been situated at the core of the accession process and its success*" (COM(2011)666; 12.11.2011, p. 2).

4.3.1 Changing Frameworks for Rule of Law Activities

1. Countries that are to introduce the decentralised system need to be able to identify strategic priorities and to follow the action plans.
2. Projects need to be based on in depth needs assessments; embedding of assistance in the country's strategies, and action plans established at the general and the sectoral levels. In this regard relevant beneficiary and EC bodies need to agree to a minimum capacity and quality standards for sector strategies and programmes which need to be met before they can be judged suitable for programming. (e.g. National parameters for longer-term programming need to be in place for sector programming to be realistic: public financing, legal/regulatory frameworks, and institutional structure. To the extent any of these are missing, they should be among the top issues on the reform agenda.)

3. More than the content of the project, the profile of the experts seems to be critical. The continuous physical presence of experts, country offices responsible for the implementation of the programmes and more use local experts all contribute to the quality.
4. Adequate staffing of beneficiary institutions and, especially, the retention of personnel need to be addressed as many institutions experience a constant outflow of qualified staff, often trained with EU assistance. Intra-institutional organization need to be strengthened, especially in the centralized ministries. There is also a need to strengthen capacities for drafting projects.
5. In order to obtain political support there is a need to shorten the period for project approval in order to obtain political goodwill. Ministers are not interested because the project will bring results after his/her mandate finishes. In some cases projects proposed one year only became fully operational four years later.
6. Priority programs/projects could typically have five- to ten-year horizons with clear “stoppage points” for review and adjustment (for example after two, five and seven years on a ten-year program) but with financing in principle available for the entire program period.
7. Sustainable judiciary reform also requires support to public administration and non-public actors to become more structured, long-term and strategic, building *vertical* accountability systems and capacities. This may or may not be a RoL component, but should be encouraged.

4.3.2 Programming Rule of Law Activities

1. Reducing the number of basic programming instruments and their periodicity for IPA II, as is intended, is strongly supported. While overarching objectives can be defined and foreseen to remain stable during the period, sub-components and implementation details can be allowed to shift flexibly.
2. Continued institutional support to key public sector actors (HJPC, JPTCs, courts, prosecution offices) should take a sector approach, be long-term and include monitorable “corporate culture” dimensions in the results framework/log-frame
3. Programming in a contentious field like judicial reform should be based on an inclusive programming process to ensure broad stakeholder involvement, ownership and agreement.

4.3.3 Implementing Rule of Law Activities

1. The time between prioritization in principle and actual activity design needs to be reduced. Basic design with a results framework that include clear Outcome and most likely Outputs should be sufficient for start-up, piloting and a detailed design phase.

4.3.4 Monitoring and Reporting Rule of Law Activities

1. The regulatory and institutional frameworks have been put in place. Project results frameworks should therefore focus a lot more on implementation results, Outcomes from organisational change and Impact on intended beneficiary groups and societal performance.

2. An overall Monitoring and Results framework for the RoL program should be designed that is strategic in terms of which projects/activities are to be monitored how often with which instruments (internal administrative reporting, external ROM reports, ad hoc in-depth studies), and which variables are to be traced how far out the delivery chain. The design should ensure that key variables across activities are monitored in similar ways (changes to “corporate culture”, client satisfaction, business use of court system to settle disputes etc.).
3. While ROM reports and “SMART” indicators will be part of such a system, the EC should also set aside funds for more innovative quality assurance activities, using local knowledge centres, CSOs and others, to track perceptions, experiences of groups that come in touch with the legal system. Use of social media, qualitative surveys etc. can provide cost-efficient, quick and flexible ways of identifying successes and short-comings, and test new approaches and ideas on how to further improve legal sector performance.

Annex G: Country Report, Kosovo

1. Country Strategy and Programme

Following the reconfiguration of the international presence, the EU's rule of law mission EULEX has been deployed throughout Kosovo with the support of authorities, and is fully operational. Kosovo has joined the IMF and the World Bank and adopted key legislation. However, major challenges remain, including the rule of law, the fight against corruption and organised crime, the strengthening of administrative capacity, the protection of the Serb and other minorities, and enhancing dialogue and reconciliation between the communities.

Kosovo benefitted from the Instrument for Pre-accession Assistance (IPA), the Instrument for Stability (IfS), EULEX and other sources of funding. IPA allocations were € 65 million in 2007, € 122 million in 2008, € 103 million in 2009 and € 63.2 in 2010. During 2011, a total of € 68.7 million granted in the IPA annual programme for 2011 was allocated in close coordination with the Ministry for European Integration and government institutions. The EU pre-accession assistance is focusing on support for the rule of law, the economy, trade and industry, and for public administration reform.

1.1 Country Programming and Country Programmes 2007-2011

The programming process starts with the identification of the financial envelope by DG ELARG (Brussels) as laid out in the three-year Multi-annual Indicative Financial Framework (MIFF). On this basis the country-specific Multi-Annual Indicative Planning Document (MIPD) is developed. The MIPD identifies broad sector objectives, including for the field of Rule of Law and the sub-fields judiciary reform, fight against organised crime and corruption (hereinafter ROL/JUST/OC/COR). Actual project identification starts with a request from the European Union Office in Kosovo (EUO) to Kosovo's Ministry of European Integration (MEI) to submit project proposals in line with MIPD priorities. After internal consultations, MEI presents a list of project ideas to EUO that are then discussed at workshops organised jointly by EUO and MEI with beneficiaries to prioritise projects. The priority concept notes are then redrafted into project fiches by EUO staff in close cooperation with beneficiaries. Project fiches are then submitted to EC Brussels for inter-service consultation. (note: Before development of the final project fiches and interservice consultation, there is at least one round of consultation and feedback between EUO and Brussels.) Once approved, these project fiches are submitted to the IPA management committee (financing proposal). If approved the Commission prepares a Commission Decision and a Financing agreement.

The process of project selection involves beneficiaries at all stages. It relies on a process of formal and informal consultations between stakeholders and EU authorities, and to some participants it seems to focus on identifying consensus rather than selecting the most strategic ones up against objectives. The complexity and length of the process demands a great deal of EUO staff time and efforts, due to several factors: a lack of clear sectoral strategies, the limited programming capacity of beneficiaries (the MEI only recently became operational), and the lack of hierarchy in the list of priorities identified in the European partnership and the MIPD. Given that the EU budget is limited, many concept notes have to be rejected which can create frustration and at times fatigue among beneficiaries.

1.2 Coherence of Objectives

1.2.1 Strategic Objectives

The European Partnership lists 32 priorities on justice reforms, anti-corruption policy, money laundering, drugs, police and fight against organised crime and terrorism. The table below presents a synthesis of these priorities (the full list is shown in annex 1). In general each one is clear and consistent with the Copenhagen criteria, but because there are so many, the list is not necessarily a good guide for prioritising financial assistance. There is also a lack of achievement indicators.

Table G.1: Main ROL/JUST/OC/COR strategic objectives

Sector	Priorities
Judicial system	<ul style="list-style-type: none"> • Independency, accountability, impartiality of justice • Efficiency of justice • Access to justice (incl. minorities) • Administrative capacity of justice • Detention standards
Anti-corruption	<ul style="list-style-type: none"> • AC strategies and law • AC competencies of enforcement authorities • Sectoral action plan • Monitoring
Money laundering	<ul style="list-style-type: none"> • Financial Investigation Unit • Training to relevant enforcement authorities
Drugs	<ul style="list-style-type: none"> • Drug prevention strategy • Investigation capacity • Inter-agency cooperation
Police	<ul style="list-style-type: none"> • Police management and internal control • Crime investigation effectiveness
OC and terrorism	<ul style="list-style-type: none"> • Strategy against OC and terrorism • OC investigation capacities • OC prospection capacities

1.2.2 MIPD Objectives

The three MIPDs for 2009-2011, 2010-12 and 2012-2014 are similar in terms of objectives and priorities as concerns ROL/JUST/OC/COR. These priorities are listed under the titles “political criteria” and partly under the title “European Standard”, as shown in table G.2 below.

MIPD priorities are coherent with the priorities identified in the strategic partnership but, paradoxically, they are more broadly formulated. For example in the file of judicial reforms, the priority is simply “strengthening the judicial reform” whereas the strategic partnership listed several priority areas: Independence, Accountability, Impartiality of justice, Efficiency of justice, Access to justice, Administrative capacity of justice and Detention standards.

The latest version (MIPD 2012-2014) does, however, include indicators of achievement for both political criteria and European standards. These indicators are specific, measurable and available which is an important step forward compared with indicators used in previous programming documents such as CARDS⁵⁴. From these indicators specific priorities can be deduced. For

⁵⁴ These indicators are not time-bound and their relevance is limited because they do not measure progress unambiguously. They should be complemented by other indicators such as population or expert surveys.

example the indicator “increased number of criminal cases detected, prosecuted and judged” requires interventions to improve justice effectiveness, administrative capacity of the justice system and independence and impartiality of judges.

Table G.2: Main ROL/JUST/OC/COR MIPD objectives

Objectives	
<u>Political criteria</u>	Consolidating the rule of law by <ul style="list-style-type: none"> strengthening the judicial system supporting police reform fight against corruption and organised crime
<u>European Standards</u>	Enhancing capacities in areas related to home affairs and notably to policies related to <ul style="list-style-type: none"> civil registration, travel documents, visa, border control, asylum and migration, money laundering, drug trafficking, the fight against organised crime and terrorism.
Indicators	
<ul style="list-style-type: none"> increased number of criminal cases detected, prosecuted and judged; increased number of corruption cases detected and prosecuted and judged; increased number of cases of organised and financial cases detected, prosecuted and judged; increase in the quality of policy formulation/legislation drafted; a reduced backlog of criminal cases 	

1.3 Financial Assistance and MIPD Objectives

This section looks at evaluation question 6 (EQ6) in the ToR, “To what extent has financial assistance addressed the priorities outlined in key enlargement strategic and policy documents in the area of rule of law, judiciary, fight against organised crime and fight against corruption?”. To answer this question three criteria were used: (a) *financial*: importance of the ROL/JUST/OC/COR in term of budget compared to the overall IPA budget, (b) *relevance*: this criterion assesses the potential impact of the ROL/JUST/OC/COR projects, (c) *scope*: this criterion assesses the coverage of the ROL/JUST/OC/COR programming.

1.3.1 Financial Criterion

The list below was compiled by cross-checking several sources: the IPA project fiche on Rule of Law, the project monitoring reports (ROM) and inputs from the EU Office in Kosovo. It shows the project titles, IPA year, the relevance and the budget allocated to the activity.

Table G.3: List of rule of law projects (details in attachment G.4)

IPA 2007	Relevance	Potential Impact	€ mill
Support to the Anti-Corruption Institutions	High	High	1.0
Twinning for the Kosovo Border and Boundary Police	Medium		2.0
Housing/holding facility for asylum seekers	Low		1.6
Equipment for Border Police I (IT SYSTEM)	Medium		1.0
Feasibility Study for High Security Prison	High	Medium	0.2
IPA 2008	Sub-total		5.8
Construction of Palace of Justice	High	Medium	25.0
Legal education system reforms	High	High	3.6
EU standards for Ministry of Justice	High	High	2.4
Capacity building or Readmission, Asylum and Migration	Low		1.0
Completion, Re-appointment of Judges and Prosecutors	High	High	0.9
IPA 2009	Sub-total		32.9
Civil Registration Agency and unified address system	Medium		5.0
Curricula, standards for legal translators/interpreters/linguists	High	Medium	1.6
Improved education in the Public Safety and Security sectors	Low		1.5
Further support the Juvenile Justice System in Kosovo	High	High	1.7
Increasing forensic capacities/Integrated ballistics ID system	High	Medium	1.2
Equipment, HQ Min Internal Affairs	High	Medium	0.5
IPA 2010	Sub-total		11.4
Kosovo Judicial and Prosecutorial Councils	High	High	1.9
Support to the Safe House / THB	High	Medium	2.1
Intelligence Led Policing in Kosovo Police	High	High	2.0
Penitentiary system	Medium		7.5
Psychiatric Institute	Medium		1.7
IPA2011	Sub-total		15.2
Agency, of Sequestered and Confiscated Assets (AMSCA)	High	High	1.0
Support to institutions combating financial/economic crime	High	High	1.0
Road safety	Low		2.5
Support to Kosovo Legal Education Reform	High	High	2.5
Strengthening International legal Cooperation	High	High	0.7
Support to reintegration of returnees in Kosovo	High	Medium	1.2
Further support border management and IBM	Medium	Medium	2.5
	Sub-total		11.4
	Total		76.7

All these 28 IPA projects are listed in the project fiche “Rule of Law”⁵⁵. However a distinction is made in the table above between the projects based on their level of relevance to sector priorities:

- Projects are considered **highly relevant** when they directly relate to the ROL/JUST/OC/COR priorities of the partnership agreement, of the MIPD or the Progress report (see Annex G3). We

⁵⁵ Data for IPA 2010 and IPA 2009 are based on the list provided by EUO

found that 18 out of the 28 RoL projects (64% of the RoL budget) are highly relevant to the ROL/JUST/OC/COR priorities. These projects include activities that directly benefit anti-corruption institutions, projects supporting judicial education and project aiming at transparency and quality of justice, infrastructure for justice, and fight against economic crime. The average budget per project is around € 1.5 million except for one project of € 25 million⁵⁶. These projects are discussed below.

- **Medium relevance:** projects are considered having a medium relevance when their objectives are not mentioned in the strategic priority on ROL/JUST/OC/COR but they have a potential impact on one of these priorities. Six projects fall into this category (27% of the RoL budget). These include projects related to border management. Project on border management have a „medium relevance“because they do not directly relate to the priorities of ROL/JUST/OC/COR. They relate primarily to economic development and good neighbour relations⁵⁷. However functioning borders are a central condition for accession, and while not directly related to the ROL/JUST/OC/COR priorities, project on border management can have an indirect impact since better managed borders can, in theory, prevent illicit trade and smuggling and therefore can reduce the level of crime in a country⁵⁸.
- **Low relevance:** this category includes projects listed in the EC project fiche on rule of law but whose objectives are not mentioned in the strategic priorities and have only a weak relation with them. These projects if successful will have a positive impact in terms of economic development, public administration, quality of life, protection of human rights, visa liberalisation (as concerns projects on civil registry and returnees) but only a minor impact on the priorities of ROL/JUST/OC/COR.

The table shows that total RoL for the period sum up to € 76.7 million. This is 16% of the overall IPA budget of € 469 million for these five years. If one only looks at the **Highly Relevant** projects, their budgets make up 10 % of the overall IPA budget. If the exceptional project of € 25 million for the building of the Justice Palace is removed, the remaining project budgets correspond to 5.4% of the overall IPA budget.

These relatively low percentages should be balanced by the fact that, in Kosovo, most of the rule of law assistance is provided by the EU general budget which funded EULEX⁵⁹ for a total of € 582

⁵⁶ This project was funded by additional sources following a donors' conference organised by the European Commission. This mobilisation of extra funds resulted in an additional annual programme for 2008.

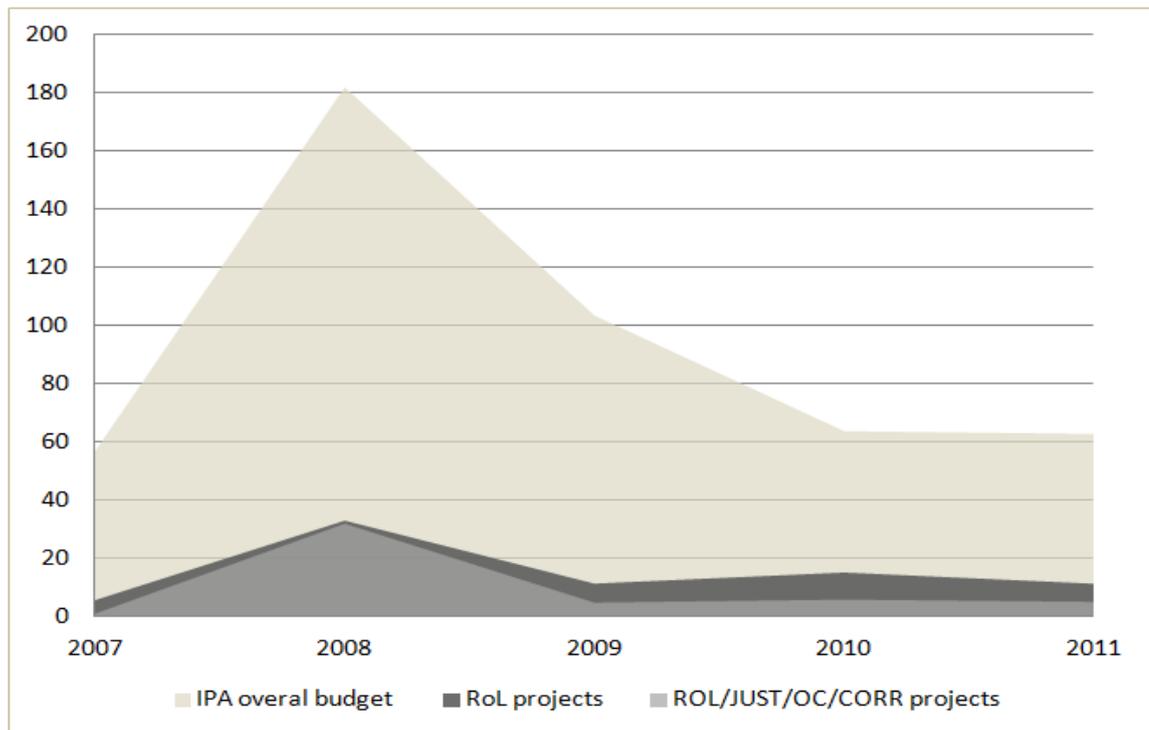
⁵⁷ International Border Management, IBM, approach aims at improving the management of the border, ensuring cooperation among main partners (police, Customs, Phytosanitary and others), with a view to facilitate licit flow of good and persons while preventing smuggling.

⁵⁸ For the IPA 2011, the EC prepared three separate fiches, one on “Judiciary”, one on “Financial crime and road policing” and one on “Border Management, Readmission and Reintegration”

⁵⁹ EULEX is the largest EU crisis management operation with 2540 staff at the end of 2011. Its aim is to help the Kosovo authorities to strengthen the rule of law, specifically in the police, judiciary and customs areas. It is financed from the EU's Common Foreign and Security Policy (CFSP) budget. EULEX is managed by the Civilian Planning and Conduct Capability (CPCC) based in Brussels and forms part of the EEAS. The current mandate of the EULEX mission ends in June 2014

million between 2007 and 2011. In addition the Instrument for Stability (IFS) funded one rule of law project in 2008 for € 5 million.

Figure G.1: RoL assistance as part of the overall IPA budget, Kosovo, by year (€ million)



1.3.2 Coverage Criterion

Coverage refers to the extent to which all sub priorities of the sector are covered by the RoL assistance. The judgment criterion to assess coverage is the distribution of the projects ROL/JUST/OC/COR among each of sub-priorities. The indicator is the percentage of the projects per priority. We do this exercise focussing on highly relevant projects since the other projects have no direct relation with the sector priorities. Table G.4 below shows the evolution of rule of law projects for each IPA year disaggregated by the main strategic priorities. The last column shows the percentage of the assistance for each main strategic priority. For sake of simplicity each project is assigned to one sub-priority only. This is clearly a simplification as most projects relate in general to several priorities.

Table G.4: Relative proportion of each Priority Sub-sector, budgets in € million

Sector	Priorities	2007	2008	2009	2010	2011	Total	as % of total
Judicial system	· Independency, accountability, impartiality of justice		0.87				0.87	1.4
	· Efficiency of justice		3.6	1.65	1.9	2.5	9.65	15.2
	· Access to justice (incl. minorities)		25	1.59			26.59	41.9
	· Administrative capacity of justice		2.4		1.7	3.2	7.3	11.5
	· Detention standards	0.2			7.5		7.7	12.1
	Total							82.2
Anti corruption	· AC strategies and law	1					1	1.6
	· AC competencies of enforcement authorities						0	0.0
	· Sectoral action plan						0	0.0
	· Monitoring						0	0.0
	Total							1.6
Money laundering	· Financial Investigation Unit					1	1	1.6
	· Training to relevant enforcement authorities					1	1	1.6
	Total							3.2
Drugs	· Drug prevention strategy						0	0.0
	· Investigation capacity					2.5	2.5	3.9
	· Inter agency cooperation						0	0.0
	Total							3.9
Police	· Police management and internal control			0.5			0.5	0.8
	· Crime investigation effectiveness			1.2			1.2	1.9
	total							2.7
OC and terrorism	· Strategy against OC, human trafficking and terrorism				2.1		2.1	3.3
	· Support to investigations and prosecution				2		2	3.2
	· Regional enforcement/judiciary cooperation						0	0.0
	Total							6.5
Total highly relevant ROL/JUST/OC/COR project (million EUR)		1.2	31.87	4.94	15.2	10.2	63.41	100.0

The table shows that most assistance addressed the judicial system. 12 projects with 82% of IPA funding went to this priority, though this high percentage is due to the large Palace of Justice project of € 25 million in 2008. Without this exceptional budget, the proportion of the justice sector would still remain prominent with 58% of the overall IPA ROL budgets.

There was only one project addressing corruption (1.6% of budget), two projects on anti money laundering (3.2% of the budget), one project against drugs (4%), two projects on police (2.7% of the budget) and two projects on measures against organised crime and terrorism (6.5% of the budget).

There is **little continuity of assistance on Rule of law**. Except for one project on juvenile justice, all the others do not seem to be integrated into a long term perspective. The larger RoL programme over these five years reveals considerable heterogeneity.

As noted, the statistics should be treated with caution since most of projects are covering several ROL/JUST/OC/COR priorities, so they offer only a broad approximation of the actual distribution among the strategic priorities. It should also be acknowledged that the sector of justice reform is much broader in term of scope and number of stakeholders than the sector on measures against organised crime which justifies partly its prominence in terms of projects. Despite these caveats, given the challenging situation in terms of corruption and organised crime in Kosovo, it is surprising that not more projects are directed towards these areas, though in the most recent IPA programmes more projects are now focussing on measures against organised crime and money laundering.

1.3.3 Potential Impact

The third criterion is the **potential impact** of these projects on RoL priority objectives. This criterion addresses EQ7: “How efficient is the selection of interventions to address priorities in the above areas?” We assume that if a project is highly correlated to the core priorities, its potential impact will be higher.

The second to last column in table G.3 shows the assessed potential impact of the projects. Eleven of the 18 High priority projects are seen to have **High likely impact**. This included projects such as “Support to the Anti-Corruption Institutions in Kosovo” (IPA 2007), “Support to the intelligence led policing in Kosovo police” (IPA 2010) and “Support to institution in combating financial and economic crime” (IPA 2011). They are all strongly correlated with the priority objectives as expressed in the Strategic partnership, the IPA document and the progress reports. Therefore, we assume that these projects have a high potential impact on these priorities⁶⁰.

Eight projects are seen to have **Medium likely impact**, including the new Palace of Justice (IPA2008) which has a budget of € 25 million. Although adequate facilities for judges, prosecutors and judicial authorities can be a factor to improve justice efficiency, the need for such facilities is not mentioned in the strategic priorities and this despite the importance of the project in terms of budget (more than half of all EC assistance on justice during 2007-2011). In fact, six projects relate to building of infrastructure or provision of equipment: these include the construction of a high security prison, the construction of a house for refugees, the construction of psychiatric unit for mentally-ill offenders, and provision of equipment for the police. These projects will be useful for Kosovo but they are considered as having a medium impact because the construction of infrastructure is not mentioned as such in the core RoL priority objectives.

Projects that have medium or low Relevance regarding ROL/JUS/OC/COR priorities have low likelihood to directly impact the achievement indicators of the sector. These projects may be relevant to other objectives such as administrative reforms, regional cooperation, economic development, etc. However we note that these projects may have an opportunity cost: while staff from the ECO is busy discussing these projects, they cannot focus on other projects that may had have a higher impact on the core RoL objectives. Furthermore when funds are allocated to these projects, they cannot be allocated to higher-priority projects.

2. Judicial Reform

When looking at the results from past or ongoing projects, this is based on the Results Oriented Monitoring (ROM) reports that have been produced on RoL projects, and findings from the field visit. Out of the 18 “High” relevance projects completed or under implementation, 12 of them had ROM reports (the list of ROM is provided as attachment G.4). The field visit took place 28-31 May 2012 during which 24 interviews were held. A summary of main findings from the mission can be found as attachment GT.5. Both sources of information have limitations: (a) despite a complete agenda organised by the EU Office, not all stakeholders were able to meet the mission during the one week

⁶⁰ Clearly **potential** impact does not always translated into **actual** impact. For example a project on legal translators had a high potential impact which did not materialise during implementation.

field visit, (b) of the 13 projects on justice, seven have a ROM report, but these reports only cover parts of the project cycle which limits the relevance of their findings.

Regarding achievements, important legislation has been adopted. Administrative improvements took place within the Ministry of Justice. The Kosovo Judicial Council has started addressing key priorities. The Kosovo Prosecutorial Council has started to function. Salaries of judges and prosecutors were increased and a careful process of vetting of judges and prosecutors was successfully implemented.

Despite these improvements, the judicial system remains weak. Significant backlogs of cases persist. Judges face threats and intimidation. Political interference in the work of the judiciary is still an issue of concern. Prosecutors and judges are often not investigating and adjudicating organised crime and corruption cases.

2.1 Assistance Provided

As noted above, most of the IPA RoL assistance benefitted the judiciary. Table G.5 shows the distribution of justice-related projects by sub-categories per year with a brief description.

2.2 Results Achieved

The overall picture that emerges from the ROM reports and the field mission is **that in the field of justice reforms, assistance provided by the EC has had a positive impact on judicial reforms**. Many interviewees indicated that the support provided by the EC has been crucial to consolidate justice institutions in Kosovo. However, the results vary considerably across projects, as the three examples based on ROM reports below reflect:

- **Vetting of judges and prosecutors:** This project is considered as a major success of the EU assistance. The ROM report identifies a number of key success factors such as adequate design, solid national and international political support and commitment, good project management (UNOPS) and very good team leader and support by the public. The project was implemented in close cooperation between the EU and the US. This project was complemented by a follow up project "Completion of re-Appointment of Judges and Prosecutors in Kosovo" implemented between 2010 and 2012 and funded by IPA. This project was therefore implemented in several phases between 2008 and 2012. The project managed to impact the nomination of the vetted officials to the highest positions in the judicial sector in Kosovo; there is still a need to complete the process of vetting at municipal level. The project has real potential to impact on the effectiveness and fairness of justice as experienced by the population. It should be noted that the first phase of this project was actually funded by the Rapid Reaction Mechanism (RRM - now IfS). RRM funds, contrary to IPA funds, can be programmed and disbursed rapidly. Many informants noted that the lengthy programming period of IPA is not conducive to donor coordination.

Table G.5: Table: IPA Funded Projects, Judicial Reform

IPA	Title and main beneficiaries	Budget and period	Main actions
2007	“Feasibility Study for High Security Prison“: Recommends to build prison under IPA 08 and 2010	€ 200,000 2008-2011	A feasibility study to assess the possibility to build a high security prison.
2008	Upgrade the infrastructure in the Rule of law sector (construction of the Palace of Justice)	€ 25,000,000 2011- 2014	Justice Palace for Kosovo Judicial Council (KJC), Ministry of Justice, Kosovo Special Prosecutor’s Office (KSPO) Kosovo Judicial Institute (KJI), Chamber of Advocates.
2008	Legal education system reforms Benef: several justice authorities	€ 3,600,000 2009-2013	To provide advanced teaching methodologies, curricula development, establish /implement a certification procedure.
2008	EU standards for Ministry of Justice Benef: Min Justice	€ 2,400,000 2009-2012 completed	To support (twinning) to administrative and management capacities, policy making and legal drafting skills of the MoJ ; support to accreditation procedures for notaries
2008	Completion of re-Appointment of Judges and Prosecutors in Kosovo	€ 876,469 2010-2012	Grant to UN – activities not clearly defined
2009	Developing curricula and standards for legal translators/interpreters and legal linguists. Benef: Univ Pristina	1,598,200 2010-2014	To create a training curricula and standards for accreditation of legal translators as well as the creation of a professional body of legal linguists
2009	Further support the Juvenile Justice System in Kosovo	1,650,000 2010-2013	To increase the capacity of police, social workers, lawyers and prosecutors to protect juvenile offenders
2010	Support to the Kosovo Judicial and Prosecutorial Councils	1,900,000 2011-2014	Support managerial capacities of KPC-KJC to increase number of inspections and evaluations carried out per year
2010	Improvement of the penitentiary system in Kosovo	7,500,000	Build high-security prison in Podujevo with a particular focus on vocational training and reintegration, and put at the disposal of the Kosovo authorities
2010	Kosovo Forensic Psychiatry Institute	1,700,000	A psychiatric unit for mentally ill offenders; training of staff
2011	Further support to Kosovo Legal Education Reform	2,500,000	Develop Court Management modules of the KJI; implement internships in EU Courts; support a Legal Resource Centre
2011	Strengthening International Legal Cooperation	700,000	Twinning experts will strengthen capacities of the International Legal Division of the Ministry of Justice in order to deal with requests of mutual legal assistance.
Ref	Title	Budget	Description
2008 RRM	Re-appointment of judges and prosecutors in Kosovo)	5,000,000	A large project implemented by UNOPS in joint partnership with the US and others aiming at reappointing all judges and prosecutors. The first phase was funded by RRM while the second by IPA.

- Another success story relates to the **Juvenile justice system**. Two ROM reports are available, one at the start of the project and the other one midterm. The first ROM report is very positive, the second one more moderate. In the ROM report the quality of the implementing agency (UNICEF) appears as a key factor for success: the fact that it has recognized expertise and the fact that it managed to establish long term relationship (and therefore trust) with the beneficiary authority ensured strong ownership and continuous support (the EC has been

funding UNICEF in previous projects). The second ROM report is less positive underlining limitations in terms of management and coordination among several stakeholders as sources of delays. However, the ROM states that: *"Official data shows that there has been direct impact of the project results. According to the Probation Service (PS), in 2011 there was an overall increase of 30% of alternative measures provided to child offenders in comparison to the previous year"* and further *"Beyond mere numbers, what is evident is that the approach of several institutions toward juvenile delinquencies has shifted from imprisonment sentences to applying more child friendly, educational measures."* which, despite shortcomings in project management, remains an impressive achievement.

- A third project, **Support to Legal Translators/Interpreters and Legal Linguists** (IPA 2009), suffered from a number of weaknesses: (a) little ownership by stakeholders due to little involvement in the design of the project; (b) the lack of a national strategy/policies covering legal translation meant that coordination among several stakeholders was challenging and created disagreement among partners as concerns the exact goal of the project, one institution met during the field visit noting that the project was sometimes perceived as designed mostly for the benefit of the international community working in Kosovo. In addition, the project faced a number of limitations in terms of management resulting in many delays. The ROM report consider the impact of the project will be limited: *"Overall there is not any impact noticed with regard to the quality of translation and interpretation at the public administration, judiciary and law enforcement agencies."*

3. Fight Against Corruption

Corruption is prevalent in many areas and is a serious concern. Some progress took place: the anti-corruption task force was strengthened, legislative framework was partially improved. However much more needs to be done in terms of number of cases of corruption identified and successfully prosecuted and a need to carefully review the financing of political parties, public procurement and declarations of assets by public officials, among other matters.

3.1 Assistance Provided

Only one project was funded focussing specifically on fight against corruption.

Table G.6: IPA Funded Projects, Fight against Corruption

IPA	Title and main beneficiaries	Budget and period	Main actions
2007	Support to the Anti-Corruption Institutions in Kosovo : Benef: Kosovo Anti-Corruption Agency, Kosovo Police, Kosovo Prosecution Service, Min of Justice	€ 1,000,000 2009- 2012- completed	To develop anti-corruption policies and a legal framework and public awareness

3.2 Results Achieved

Only two ROM reports are available: at the inception phase and midterm. It is therefore difficult to assess the concrete results of the project. However during the field mission, stakeholders stressed the positive impact of the project in terms of new legislation as the project supported the drafting of several anti-corruption laws.

Despite this positive assessment, the project seems to have remained at the level of process with limited impact in terms of corruption as perceived/experienced by the population. A study on the corruption situation in Kosovo could have been helpful in this regards (at least as a baseline study) but this component seems to have been cancelled. The difficulty to transform process into impact may partly explain by limited political support.

4. Fight Against Organised Crime

The capacity to fight organised crime remains limited in Kosovo. Few arrests and no seizure of assets took place. A more proactive approach by the law enforcement agencies and judicial authorities is needed to tackle organised crime. Human and technical capacity needs to be strengthened and the quality of investigations considerably enhanced. Economic/financial crime and money-laundering remain serious concerns. Kosovo's capacity to investigate and prosecute economic crimes remains limited. Despite some seizures, the effectiveness of the measures against illicit traffic is very limited. Efforts to fight drug-trafficking need to be significantly reinforced. The police need to address structural and organisational challenges and improve its ability to fight complex types of organised crime.

4.1 Assistance Provided

Six projects were identified as relevant, including projects aiming at reinforcing investigation capabilities of the police, fighting money laundering/economic crime, and fighting illicit drugs and trafficking in human beings (THB).

Table G.7: IPA Funded Projects, Fight against Organised Crime

IPA	Title and main beneficiaries	Budget and period	Main actions
2009	Increasing forensic capacities by introducing an Integrated ballistics identification system (IBIS)	1.200.000 2010-2011	Supply contract to equip the Central Forensic Laboratory with the Integrated Ballistics Identification System (IBIS)
2009	Equipment of the Headquarters of Ministry of Internal Affairs	500.000 2010-2010	Equipping the new HQ of the Ministry of Internal Affairs with IT and furniture
2010	Strengthening institutions in the fight against trafficking in human beings and domestic violence	2.100.000 2011-2013	Building of a safe house for victims of THB; development of necessary regulations and operating procedures
2010	Support the implementation of Intelligence Led Policing in Kosovo Police	2.000.000 Under procurement	KP provided with IT equipment to support the implementation of intelligence led policing (ECO); P provided with mentoring to implement the IT system (EULEX)
2011	Support to the Agency for Managing of Sequestered and Confiscated Assets (AMSCA)	1.000.000	To establish internal rules of AMSCA, To support coordination mechanisms between AMSCA and other enforcement authorities
2011	Support to Kosovo institutions in combating financial and economic crime	1.000.000	To revise legal framework, provide advanced training to FIU and enforcement authorities, to develop awareness material
2011	Strengthening integrated border management and the fight against drug trafficking	2.500.000	Review of legal and policy framework; provision of enhanced trainings; equipment for the detection of drugs (one twinning and one supply contract).

4.2 Results Achieved

Because these projects were launched recently, there are no ROM reports and no concrete achievements to report, but most of these projects will provide equipment or buildings. The very recent project (IPA 2011) on asset management and economic crime appears more relevant.

5 Looking Ahead

When looking ahead regarding how EC resources for Rule of Law can be better programmed, the team has relied on various sources of information, as provided below.

5.1 Relevant Studies and Evaluations

There are two sets of studies that look at the impact of EC support:

- An Interim/strategic evaluation of EU IPA pre-accession assistance
- ROM reports that come out of the permanent monitoring of EC funded activities.

5.1.1 Interim Strategic Evaluation of EU IOA Pre-Accession Assistance

An IPA mid-term evaluation was conducted in Kosovo in 2011 assessing preliminary results of all IPA assistance. Those recommendations that are most relevant for the sector of Rule of law were:

- Objectives at strategic level should be more focused and IPA assistance should focus consistently in successive years on a limited number of priority sectors;
- Beneficiary authorities need to be more involved in the preparation phase and should provide effective coordination of the concept notes; project design should be more thorough with more time available for project selection and preparation;
- National sector strategies should cover all *acquis*-related sectors and MIPD priorities, since at present there are significant gaps in coverage.
- The possible cause of limited achievement lies in the lack of beneficiary ownership and commitment to policy reforms as well as the lack of government financing and institutional support after the EU-funded project ends.

5.1.2 ROM Reports

19 ROM reports covering 12 RoL IPA projects were made available (see attachment G.4):

- On several occasions the ROM reports underline the lack of adequate indicators. Emphasis is often placed on outputs rather than results or impact. Often objectives are broadly defined and projects seem to focus on processes (training provided, equipment delivered, law passed, etc.) rather than results (change as experienced by the population).
- Assumptions and risks are often not sufficiently considered. Often projects are being launched with only a superficial assessment of risks.

In addition, focussing on two projects (Vetting of Judges and Juvenile justice) the ROM reports identified the following success factors:

- Commitment/ownership of the authorities;
- Good donor coordination;

- High level of expertise and commitment of the contractors.

One project (Legal translator) has particularly poor impact prospect. The ROM report identifies two factors for failure:

- Poor quality of expertise;
- Lack of ownership from stakeholders.

5.2 IPA Assistance: Lessons Learned

The field visit focused on identifying the answers to three issues: the challenges in terms of RoL, key factors of success, and priority areas of interventions. Responses were relatively consistent and a table listing the recurrence of responses was established (attachment G.5). The following presents the main findings in function of the number of times they were mentioned by interviewees.

- **Political will and ownership:** Many interviewees (10 out of 24) noted that projects need to be steered by beneficiaries, based on real needs identified in their sector strategy, when available. Beneficiaries need to show real commitment demonstrated by effective co-financing.
- **Quality of international expertise:** 10 of 24 consider that experts at the core of the project often play a key role in its success or failure. Even more than the project design, the quality of project manager appears to be essential. This is due to the fact that a poorly designed project can always be adjusted by a good manager using the inception phase or the dialogue during steering committees. These interviewees stressed the fact that experts need to be experienced and motivated. Their inputs need to be based on clear TORs including achievement indicators.
- **Coordination among donors:** 8 of 24 believe donor coordination is a key factor for success especially in Kosovo. Donor coordination can trigger political commitment. Coordination is particularly needed in the often sensitive field of RoL. It can be argued that the key factor of both the most successful project in Kosovo (vetting of Judges) and one of the most challenging (BMS/IT system with border Police) can be traced back to the level of coordination among donors (in both cases with the US). Sometimes different technological responses proposed to an identical problem can create confusion and be counterproductive. Yet real coordination is difficult to achieve due to a double incentive not to: (a) beneficiaries may consider that better coordination may lead to increased control/ influence of the donor community; b) donors are often under pressure to deliver and spend their budget and increased coordination may lead to slower disbursement and less visibility
- **Length of the projects:** change in the field of RoL takes time; eight informants noted that little can be achieved with short-term projects. Long term projects or several phases of the same project are often mentioned as a factor of success. Only long term approach can gradually change mentalities. Long term approach shows commitment/ resolution of the donor community.
- **Commitment of donors:** Many interviewees (8 out of 24) consider that a key factor for success of RoL project is the commitment of donors as reflected by the long-term posting of experts, and the flexibility and ability to respond rapidly to requests from beneficiaries.
- **Clear guidance and benchmarks:** many interviewee (7 out of 24) indicated that the main strategic document that guides EC assistance (which they consider is the Progress Report) is a

missed opportunity: it is considered too vague and too ambiguous and not able to identify specific priorities in the field of RoL and to propose practical solutions. A Progress Report, or any other regular assessment report, that would be more specific in terms of priority areas of interventions on RoL could become an important tool to guide beneficiaries towards progress and to facilitate coordination among donors.

- **Practical and operation training:** Many interviewee (7 out of 24) consider that judges and prosecutors should continue to receive support in term of training. Yet training should be specific and practical and be delivered by experts (international and local) really knowledgeable of their field of expertise and knowledgeable of the specificities of the country. Very often training on the new criminal prosecutor code was mentioned; also important is to develop skills of judges and prosecutors on issues related to measures against organized crime (including money laundering and asset seizures) and high corruption;
- **Judicial education and public awareness:** many interviewees (7 out of 24) consider that assistance should focus on judicial education at the university level. They also consider that SCOs should play a larger role especially as concerns public awareness on the threat of corruption and organised crime on sustainable development.
- **IPA procedures:** 6 of 24 consider that IPA procedures as too complex. They present a challenge both for government and civil society organisations. Furthermore, IPA cannot easily reconcile priorities with actual assistance. The reason is that it usually takes two years from planning to implementation so when the project is ready to start, national priorities may have changed or the need has been filled by the national budget or with the support of another donor. IPA procedures also do not allow for easy budget extensions.
- **Rule of Law strategies:** several interviewees (5 out of 24) consider that projects should focus on the development of sector strategies (judiciary, anti-corruption, anti-organized crime strategies, media strategy etc.). Sector strategies should ensure that assistance is coherent with national plans which should reinforce ownership and political commitment.
- **Absorption capacity:** several interviewees (5 out of 24) stressed the importance for beneficiaries to identify dedicated staff to support project implementation; projects that do not have satisfactory absorptive capacity can become counterproductive (project implementation can weaken existing capacity and may result in reduced control capacity of beneficiary institutions).
- **Lack of impact indicator on RoL:** some interviewees indicate the difficulty to identify meaningful impact indicators in the field of RoL, an issues which further complicates the assessment of results;
- **Follow up and impact assessment:** some interviewees indicated that a systematic and comprehensive follow up of and impact assessment is lacking. Follow up and impact assessment should also be included in the design of projects.

5.2.1 General Findings

When assessing the extent to which EC financial assistance addressed ROL/JUST/OC/COR priorities, we found the following:

- ROL priorities are clearly defined and there is coherence between the priorities identified in the EU partnership, the priorities identified in the MIPD and the progress reports. There is often no impact indicator which makes measurement of progress difficult.
- The process of project selection is complex and seems to focus as much on finding a consensus among parties as on identifying cost-effective interventions. Despite dedication and efforts of EU staff, the complexity and length of the process can sometimes create frustration among beneficiaries.
- In terms of budget only 16% of the IPA budget has been spent on Rule of Law issues and 10% has been spent on issues highly related to ROL/JUST/OC/COR priorities.
- In term of coverage, most of the RoL projects benefited the sub-sector of justice reform with no projects on drugs and few projects on issues related to measures against corruption and organised crime;
- In term of potential impact, 42% of selected projects have a high potential to impact on the ROL/JUST/OC/COR priorities while 25% have a medium impact potential. There is little continuity in project support over the years except for one project on Juvenile justice.
- The overall budget on Rule of Law does not show a clear trend in terms of priority sector of intervention in the last years, though there is an increased focus on organised crime in recent years.

Regarding the actual impact of RoL projects:

- In the field of justice reforms, assistance provided by the EC had a positive impact on judicial reforms in Kosovo (13 projects). The support provided by the EC has been crucial to consolidate justice institutions in Kosovo.
- In the field of measures against organised crime and corruption, results are limited: only one project was launched in the field of anti-corruption. It achieved some results but mostly in terms of process (new laws) but no concrete impact in terms of reduction of corruption as experienced by the populations. As for measures against organised crime, six projects are in preparation but none have been implemented to date.

The basic conclusions are:

- EC assistance partially addressed ROL/JUST/OC/COR priorities. The main reasons for this are (a) the limited political commitment to reforms and (b) the limited absorption capacity of beneficiaries. Other factors play a role, such as the lack of clear sector strategies and the complexity of IPA programming, but to a lesser extent.
- Political commitment to RoL is both indispensable yet very difficult to achieve. It is indispensable because many of the reforms proposed by RoL assistance are sensitive and need to receive political approval. Political commitment is difficult to achieve because RoL assistance puts in place rules and procedures that limit the discretionary authority of government and strengthens transparency and accountability mechanisms.

- Absorption capacity is another challenge. The EUO verifies that proposed projects are implementable, i.e. that the necessary preconditions are in place. This means that often projects that are not considered sufficiently “mature” are delayed.

5.3 Looking Ahead

Based on the findings above, recommendations are made along four dimensions: general framework conditions, programming, implementation and monitoring.

5.3.1 General Frameworks for Rule of Law Activities

1. Political commitment is a central factor for the success. It is recommended that the EC consider two approaches to increase political commitment in particular joint project design among donors and development of oversight mechanisms.
 - *Joint project design*: Coordination needs to be practical in terms of joint programming and if possible joint project design. Joint project design would provide a coherent donor approach to national authorities which would encourage their own commitment.
 - *Oversight mechanisms*: Enhanced political commitment can also be achieved by encouraging civil society organisations to regularly assess progress in the field of Rule of Law and to diffuse their findings to the population at large. Assessments need to be regular and based on sound methodologies and on relevant indicators⁶¹.

5.3.2 Programming Rule of Law Activities

2. Due to the long-term nature of RoL reforms, and limited IPA resources available, it is recommended that EC assistance focuses on a few priorities providing sustained and consistent assistance in successive years. Priority areas of interventions could include:
 - Enhancing effectiveness of criminal justice via practical advanced training for judges, prosecutors and enforcement investigators on issues related to fight against public corruption, organised crime, and asset forfeiture and asset recovery.
 - Reinforcing public support for RoL via support to judicial education and public awareness;
 - Strengthening accountability by providing extended support to national oversight mechanisms (Parliament, the ombudsman, CSOs, social actors such as journalists).
3. Within the broad priority areas, it is recommended that assistance, where appropriate, be designed in coordination with other key donors. Uncoordinated assistance has in some cases led to projects that work at cross purposes, a situation that should be avoided.
4. Assistance needs to be based on clearer set of priorities, indicators of achievement and benchmarks. In this regard it seems the Structured Dialogue on Rule of Law (launched in May 2012) may be an important step in this direction. The EC has also stated that the use of objective indicators will be core for the future IPA II approach.

⁶¹ For each main rule of law objective, a set of relevant indicators needs to be identified. Assessments should be based on several indicators since single indicators are not sufficient to assess RoL progress.

5. A significant part of IPA RoL assistance provides equipment and buildings. This can be positive especially if this support is linked to specific achievements. For this reason, provision of equipment and infrastructure could, where appropriate, be conditional upon the achievement of specific RoL reforms.

5.3.3 Implementing Rule of Law Activities

6. Project experts (twinning experts, technical assistance experts or experts from international organisations) play often a key role in the success of a project. It is recommended to reinforce mechanisms to select high quality experts and when expertise turns out not to perform as expected, to allow for its swift replacement.

5.3.4 Monitoring and Reporting Rule of Law Activities

7. Continuous monitoring is important for RoL projects. The current monitoring system does not seem to be systematic if judged by the number of ROM reports available. It is recommended to reinforce the monitoring of RoL projects. Project monitoring should be regular, independent and based on a set of meaningful indicators. The increasing use of impact indicators and benchmarking planned by the EC (IPA II) will be useful in this regard.
8. The EC should regularly assess the impact of its RoL assistance and the progress on RoL in general. The EC should consider setting up an independent mechanism to regularly (a) assess progress in terms of RoL as experienced by the population, (b) define priorities, and (c) propose possible solutions. This assessment mechanism should not replace but complement the Progress Report

Attachment G.1: European Partnership RoL Priorities, 2008 Kosovo Agreement

<p>Judicial system</p>	<ol style="list-style-type: none"> 1. Ensure effective, independent, accountable and impartial courts and prosecution offices, free from political influence. 2. Strengthen the Prosecutor's Office to ensure that it is able to comply with the principles of autonomy and impartiality. Continue to strengthen the Special Prosecutor's Office. Ensure the implementation of an efficient witness protection security scheme. 3. Approve laws on courts and the prosecution and implement them. Develop a system of administrative justice and streamline relevant legislation and competences. 4. Implement the automated case management system fully in all courts and prosecution offices. Reduce the backlog of cases and the enforcement of civil court decisions. 5. Strengthen municipal courts and police action to address, prevent and sanction illegal occupation, use and construction of property in an impartial manner. 6. Further develop legal education and training, particularly for judges, prosecutors and administrative personnel. Transform the Judicial Institute into a viable institution responsible for judicial training. 7. Develop the capacity in the government free from undue political influence to take on responsibilities in the areas of justice and the interior. Implement a system of appointment, dismissal and career promotion for judges and prosecutors in line with European standards, free from political interference. 8. Increase efforts to meet international standards in the handling of mutual legal assistance requests in criminal matters and extradition requests. 9. Strengthen the access to justice of minority communities and reinforce mechanisms such as the courts' Liaison Offices. 10. Continue to take measures to facilitate an equitable ethnic representation of judges. 11. Strengthen the administrative capacity, coordination and effectiveness of the judiciary and all law enforcement agencies. Ensure the viability of a comprehensive legal aid system. 12. Define and consolidate a complete body of law that respects the rights and interests of all communities, drawing from all legal sources currently applicable in Kosovo. 13. Develop an alternative dispute resolution mechanism. 14. Improve the penitentiary system with particular attention to security, control, management, vocational training and reintegration schemes, as well as the condition of facilities.
<p>Anti-corruption policy</p>	<ol style="list-style-type: none"> 1. Implement the law on the suppression of corruption and the anti-corruption plan. Strengthen the anti-corruption agency and take measures to ensure fully its independence and functioning. 2. Streamline the competencies of the Anti-corruption Agency, the Office of Good Governance and the Anti-corruption Council. 3. Develop sectoral action plans to fight corruption and increase awareness of the corruption problem within the public administration as well as in civil society. 4. Establish a track record in the fight against corruption.
<p>Money</p>	<ol style="list-style-type: none"> 1. Enhance the capacity of the Financial Investigation Unit within the Kosovo Police Service (KPS) organised crime directorate.

laundrying	2. Train specialised prosecutors and judges. Streamline competencies in the area of money laundering in the different institutions involved.
Drugs	<ol style="list-style-type: none"> 1. Develop a drug prevention strategy and a relevant plan of action to implement it. Further strengthen local capacity in the narcotics investigation section. 2. Ensure inter-agency and international cooperation, to considerably improve results in the fight against drug trafficking.
Police	<ol style="list-style-type: none"> 1. Adopt the law on the police. 2. Improve the effectiveness of investigation of crime. Adopt and implement legislation to establish the KPS and strengthen its investigative and internal control capacities. Strengthen its leadership. 3. Adopt a crime reduction strategy and implement it. Develop a strategy to collect weapons, complete and enforce small arms related legislation. 4. Set up a strategy and an action plan to combat organised crime and terrorism. 5. Complete the legislative framework concerning organised crime. 6. Further strengthen local capacity in the organised crime directorate within the KPS. 7. Implement the action plan and strengthen legislative provisions and structures to fight more efficiently against trafficking in human beings. 8. Further strengthen of regional and international cooperation, including in the field of law enforcement, including by transfer of suspects and sentenced persons and mutual legal assistance.
Fighting organised crime and terrorism	<ol style="list-style-type: none"> 1. Implement and update the strategy against organised crime and terrorism. 2. Strengthen local capacities to investigate organised criminal activities. 3. Strengthen judicial capacities to prosecute and try organised and financial crime cases. 4. Further strengthen of regional and international cooperation, including in the field of law enforcement, including by transfer of suspects and sentenced persons and mutual legal assistance.
Visas, border control, asylum and migration	<ol style="list-style-type: none"> 1. Enhance the efficiency of the control of the flow of persons at the borders/boundary and enhance the effectiveness and transparency of the department of border and boundary police. 2. Strengthen the cooperation between border/boundary management agencies and with neighbouring countries. 3. Establish shelters and reception facilities for asylum seekers. 4. Adopt a law on migration in accordance with European standards. Draw up a strategy and action plan concerning migration, addressing in particular the readmission and reintegration of persons returned from abroad. 5. Further enhance the capacity of the directorate for borders, asylum and migration within the Ministry of Interior. Further strengthen the operational capacity of the border and boundary police service within the Kosovo Police Service.

Attachment G.2: MIPD Priorities, Rule of Law

	Objectives	Indicators (*)
<u>Political criteria</u>	<p>Consolidating the rule of law by</p> <ul style="list-style-type: none"> strengthening the judicial system and supporting police reform and the fight against corruption and organised crime 	<ul style="list-style-type: none"> increased number of corruption cases detected and successfully prosecuted, increase in the quality of policy formulation/legislation drafted (as measured by a reduction in the time spent on its adoption, international expert opinion) and the effects of its implementation (as measured by legislation-specific benchmarks), at all levels; increased number of criminal cases detected, prosecuted and judged, including in the area of corruption, confirming a strengthened judicial system resulting from the further development of legal education and training, particularly for judges, prosecutors and administrative personnel, a reduced backlog of criminal cases pending resulting from a more efficient management of courts, prosecutor's offices and judiciary processes;
<u>European Standards</u>	<p>Enhancing capacities in areas related to home affairs and notably to policies related to</p> <ul style="list-style-type: none"> civil registration, travel documents, visa, border control, asylum and migration, money laundering, drug trafficking, and the fight against organised crime and terrorism. 	<ul style="list-style-type: none"> An increase in the number of cases of organised and financial crime detected prosecuted and judged, adoption of an action plan on integrated border management and signing integrated border management agreements with neighbouring countries, relevant draft laws allowing for EU-compatible visa, asylum and migration policies devised/drafted;

Attachment G.3: Priorities derived from 2011 Progress Report

Judiciary	<ul style="list-style-type: none"> To improve efficiency of judiciary (court management, case management) and the enforcement of decisions (p12-13); To improve impartiality and neutrality of judges prosecutors (protection, working environment, safeguards against threats).
Anti-corruption	<ul style="list-style-type: none"> Improve the investigation capacity against corruption crime; Improve cooperation between police, prosecution and AC agency; Improve legislative framework including on law on financial of political parties; Fight against corruption in education and health care
Money laundering	<ul style="list-style-type: none"> Advanced training for prosecutors and judges on AML, Revision of legislation (provision and sanction of the criminal code), Training for judiciary and enforcement authorities on seizure/confiscation of ill-gotten assets; Enhanced cooperation between FIU and reporting entities
Drugs	<ul style="list-style-type: none"> Advanced training for judges/prosecutors To full fill the position of counter narcotic coordinator To improve resources (staff, equipment, working space) To develop intelligence led approach To create a undercover unit in the police To enhance regional data sharing To address local drug demand and developing effective treatment capacities
Police	<ul style="list-style-type: none"> To take step to avoid political interference To implement community policing approach in the regions To establish police station in municipalities To establish performance-based indicator system To establish staff promotion system To increase strategic planning capacity To increase analytical capabilities of the operations side of the police To increase information and communication technology
Fight against organised crime and terrorism	<ul style="list-style-type: none"> Organised crime: to improve witness protection; Fight against human trafficking: to improve strategies and legislation ; to improve judicial follow up; Fight against terrorism: to enforce policies and legislation

Attachment G.4: ROM Monitoring Reports and their Ratings

IPA	Title of the project	Relevance and quality of design	Efficiency of Implementation to date	Effective-ness to date	Impact prospects	Potential sustain'y
07	Support to Anti-Corruption Institutions in Kosovo – mid term	B	B	C	B	C
07	Idem -Mid term	B	B	B	B	C
07	Equipment for Kosovo Border and Boundary Police Mid- term	B	C	B	B	B
08	Completion of Re-appointment of Judges and Prosecutors in Kosovo	A	A	B	A	B
08	EU standards for Ministry of Justice	A	A	B	A	B
08	Idem – mid term	B	B	B	B	B
08	Readmission and Asylum	B	B	B	B	B
08	Idem midterm (10-2010)	A	A	B	B	B
08	EU Standards for the Ministry of Justice – early Monitoring	B	C	B	B	B
08	Legal Education System Reform Early term	B	B	B	B	C
08	Idem - Mid term	B	B	B	B	B
08	Idem - Final	B	B	B	B	B
08	Supervisor for "Construction of a Palace of Justice Compound"	B	B	B	B	B
09	Support to Legal Translators/ Interpreters and Legal Linguists	C	C	D	C	C
09	Idem– mid term	C	C	D	D	C
09	Further support to Juvenile Justice System – mid term	A	A	B	B	B
09	Idem – mid term	B	C	C	B	C
09	Support to Civil Registration Agency, Unified Address System - mid term	B	B	B	B	B
09	Support to Kosovo Judicial/ Prosecutorial Council – mid term	B	B	B	B	B

Attachment G.5: Overview of Main Findings of Field Mission

	Number of the source (see Minutes of interviews in Kosovo)																									
	Total	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	
1. Main key factors of success of RoL projects																										
feasibility study/design capacity/project mngt	7											1	1		1			1					1	1	1	
need for sector strategies	3	1											1					1								
political will/commitment/ownership	10	1		1		1	1					1	1						1	1	1	1				
long terms projects	8	1	1			1			1									1	1						1	1
trust/proximity between expert and beneficiary	6		1				1					1						1							1	1
quality of international staff	10		1			1	1		1			1	1					1	1		1			1		
coordination with donors	8		1										1	1				1	1					1	1	1
absorption capacity	5						1		1				1					1		1						
development perspective	1								1																	
use of national experts	1													1												
2. Main challenges in terms of RoL																										
donors under pressure to deliver	2																						1			1
poor public support for reforms	1																						1			
corruption within Public procurement / judicial system	4					1					1								1		1					
North Kosovo / Role of EULEX	5		1		1	1		1			1															
lack of sector strategies	2	1																	1							
IPA instrument long procedures / inflexibility/ opacity	6	1	1		1								1						1	1						
limited managerial capacity of EUD	2											1							1							
PR not effective guide for RoL reforms	7	1		1					1												1	1	1			1
staff rotation/ institutional memory	2		1										1													
limited understanding of EC assistance	2		1																		1					
fatigue towards EU assistance / EU integration	2			1							1															
lack of impact indicators on RoL	4	1												1					1		1					
EUD limited capacity on RoL	3	1																			1		1			
lack of coordination/overlapping/ competitions among donors	8				1			1						1					1	1				1	1	1
length of the projects/ RoL need time	2	1							1																	
major judiciary reforms	1				1																					
absence of judicial police					1																					
3. Future sector priorities																										
to involve civil society on RoL	4	1							1												1					1
to develop national RoL strategies and inter institutional cooperation	5	1			1								1						1				1			
to increase coordination among donors	0																									
to extend vetting process to all staff of Justice	2		1																					1		
operational advanced specialised practical training for prosecutors and judges (OC, COR, AML/ new CPC) effectiveness backlogs	7		1		1		1				1			1										1	1	
IT management case system	1		1																							
infrastructure and equipment	0																									
regional cooperation (exchange of data)	2				1																		1			
AC legislation	1					1																				
Judicial education (lawyers) and public awareness on RoL	7						1			1	1				1							1	1	1		
OC legislation (financial crime , money laundering)	2						1								1											

Annex H: Country Report, Former Yugoslav Republic of Macedonia

1. Country Strategy and Programme

The FYR Macedonia was the first country in the Western Balkans (WB) to sign the Stabilisation and Association Agreement (SAA) in April 2001. The Agreement entered into force in 2004. In the same year, it applied for membership and was granted candidate status in December 2005.

In February 2008, the Accession Partnership was adopted. In 2009 and again in 2010, 2011 and 2012 the Commission recommended starting the negotiations however the Council has not yet approved them.

In March 2012 a High Level Accession Dialogue was launched by the Government and the Commission which among others also focuses on strengthening the rule of law.

1.1 Rule of Law Situation

Independent and efficient judiciary, fight against corruption and organized crime are key challenges to the rule of law. In the accession process of the Western Balkan countries strengthening the rule of law is “identified as continuing major challenge and a crucial condition” (EC 2011a, p. 4, 23).⁶²

In the former Yugoslav Republic of Macedonia while progress in key reforms has been made there are significant challenges in strengthening the independence of the judiciary and fighting against corruption (EC 2011a, p.26). Major shortcomings exist in legislation implementation and effective enforcement (EC 2011a, p. 26, 40).

The country has adopted a number of documents relevant for the accession such as the National Strategy for European Integration which represents a sort of an umbrella document on EU integrations; the National Programme for the Adoption of the Acquis (NPAA) also identifying measures in the Rule of Law as well.

The NPAA is in line with Accession Partnership and findings of Progress Report. In particular in the field of rule of law there are several national sector strategies adopted: Strategy for Reform of Criminal Legislation 2007-2011; National Action Plan for implementation of the Penitentiary system reforms 2009-2014; National Programme for Prevention and Repression of Corruption; National Programme for Prevention and Reduction of Conflict of Interest with Action Plan 2011-2015. More specifically the following sections will address the policy documents in the particular field of judicial reform, organized crime and fight against corruption.

1.2 Country Programming and Country Programmes 2007-2011

One of the key areas of the financial assistance to Western Balkans countries has been the area of the rule of law. Justice and home affairs and fundamental rights is one of the six sector priorities

⁶² Communication from the Commission to the European Parliament and the Council, Enlargement Strategy and Main Challenges 2011-2012, Brussels 12.10.2011, COM (2011) 666 final, p.4,23.

selected by the Commission for programming financial assistance for the period 2011-2013 (MIPD 2011-13, Macedonia, p.3).⁶³

Among others in the rule of law, judiciary fight against organized crime and corruption are a priority for twinning and financial assistance (EC 2011a, p. 23).

From 2000-2006 technical assistance and support was provided through the CARDS programme assistance and as of 2007 it is provided under the auspices of the Instrument for Pre-Accession Assistance (IPA).

In FYR Macedonia with regards to CARDS, the European Agency for Reconstruction was responsible for its management until 2008. It managed around € 235 million in CARDS contracts, out of which 21% was allocated to justice and home affairs (CARDS p.vi).⁶⁴

With regards to the Instrument for Pre-Accession Assistance (IPA), it now represents the essential instrument for providing financial assistance by the Commission. In FYR Macedonia as of 2007 there are € 288 million for projects and the portfolio managed by EUD Skopje is € 115 million. Out of this, 85% has been contracted and more than 60% disbursed by June 2011.

The allocation of IPA assistance for FYR Macedonia for 2007-2013 is shown in the table below

Table H.1: IPA Allocations, FYR Macedonia 2007-2011 (€ million)

Country	2007	2008	2009	2010	2011	2012	2013
Macedonia	58.5	70.2	81.8	91.6	98.0	101.8	117.2

The Multi-Annual Indicative Planning Document (MIPD) adopting a sector based approach for the 2011-2013 provides € 305 million in assistance for FYR Macedonia. According to the MIPD 2011-2013 in FYR Macedonia in the sector of justice, home affairs and fundamental rights the indicative financial allocation for the period 2007-2010 is € 44 million and for the period 2011-2013 is € 24.38 million. In the € 44 million⁶⁵ in the Justice and Home Affairs nearly 60% were technical assistance and twinning, quarter equipment supplies, 10% different studies and only 5% for infrastructure (CARDS, p.46).

With regards to IPA and FYR Macedonia, four out of five IPA components are transferred to the national authorities through the Decentralized Implementation System (DIS). In the next three years the EU support will focus on consolidation of the Rule of Law through Judiciary and Penitentiary reforms and capacity building to fight organized crime and corruption in public and private sector (MIPD 2011-13, Macedonia, p.18).

⁶³ Annex Instrument for Pre-Accession Assistance (IPA), Multi-annual Indicative Planning Document (MIPD) 2011-2013, the former Yugoslav Republic of Macedonia, p.3.

⁶⁴ Retrospective evaluation of CARDS programmes in the former Yugoslav Republic of Macedonia, Final Report, July 2009, p.vi.

⁶⁵ In the Justice and Home Affairs through CARDS annually the following assistance in Euros was provided : 6,66 million for 2000; 2,7 million for 2001; 3,26 million for 2002; 6,31 for 2003; 10,22 for 2004, 9,33 million for 2005; 5,22 million for 2006. See: Retrospective evaluation of CARDS programmes in the former Yugoslav Republic of Macedonia, Final Report, July 2009, p.44.

1.3 Findings and Conclusions

On the **overall programming**:

- The Country has set up the institutional framework and the main policy documents in line with the EU Integration priorities.
- With regard to intervention logic of assistance the conclusion is that the objectives are not clearly prioritized in the programming document and not supported by measurable impact indicators.
- Overall, substantial amount of assistance is allocated for the rule of law assistance and the sectors under evaluation.
- While MIPDs provide a three-year funding horizon, they lack consistent established indicators in RoL and the sectors addressed here.
- The Decentralized Implementation System in general is a positive step for the country and the increase of ownership it also represent an additional challenge for national institutions and the EC.
- Twinning projects are better accepted by national institutions as they provide for longer presence of international expertise and a better assessment of needs.
- Sequencing of projects or longer term projects is especially important for rule of law reform.
- Programming in a contentious field like judicial reform should be based on an inclusive programming process to ensure the broadest ownership and agreement possible, and this requires time.
- National parameters for such longer-term programming should be in place: public financing, legal/regulatory frameworks, and institutional structure. To the extent any of these are missing, they should be among the top issues on the reform agenda.
- IPA assistance should also be able to provide for more immediate or short term assistance to address imminent reform needs.

2. Judicial Reform

A well-functioning judiciary which is impartial and effective represents a key criterion for EU integration. The 2012 Progress Report notes that the legislative and institutional framework is in place though further efforts to guarantee independence and impartiality in practice are needed (pg.11). In similar terms, this is also noted in the 2011-13 MIPD stating that the legislative framework on the judiciary is mainly in place though further strengthening of the efficiency and independence, recruitment procedures for graduates of the Academy is needed (p.10). The National program for adoption of the Acquis 2011 also emphasizes the strengthening of the independence and impartiality of the judiciary as well as the increase of efficiency and professionalism.

The Progress Report of 2010 noted limited progress in judicial reform though a reduction of backlog of cases was observed. According to the 2011 Progress Report, further amendments as regards to independence, efficiency and transparency of justice were made to the legal framework with the

adoption of a judicial reform package and in removing the voting rights of the Minister of Justice on the Judicial Council.

Programming of the EU funds in the field of judicial reform is based on the priorities established in Accession Partnership, NPAA, Progress Report, the Strategy for Reform of Criminal Legislation 2007-2011, National Action Plan for Implementation of the Penitentiary System Reforms Programming of the EU funds in the field is based on the priorities 2009-2014 etc. (MIPD 2011-13, Macedonia, p.18).

The MIPD 2011-2013 focuses in implementation and proper enforcement, further efforts in criminal procedure and prison reform, police reform, fight against money laundering, and organized crime (MIPD 2011-13, Macedonia, p.10).

2.1 Assistance Provided

The Judiciary system in the FYR of Macedonia prior to IPA has received financial assistance from CARDS until 2007. The following CARDS projects relevant to the judicial reform were implemented:

CARDS 2001 – TA to support the creation of a Training Institute for the Judiciary; CARDS 2003 – Development of the administrative and processing capacity of the courts and prosecutors; CARDS Regional Judiciary 2003 program; CARDS 2004 – Technical Assistance to the Training Institute for the Judiciary – Phase 2. The project was implemented during June 2006 and February 2009; CARDS 2006 reform of the Judiciary System; CARDS 2005- Support for Public Prosecutor Office; CARDS 2003- Reform of Judiciary System; CARDS 2000-Reform of the Court System; CARDS 2004- Professional selection and training of the Judiciary.

One example of such assistance is **the CARDS 2004 – Technical Assistance to the Training Institute for the Judiciary –Phase 2** implemented June 2006 - February 2009. Among others it achieved the following results: drafting of legislative amendments and secondary legislation relevant for the Academy; development and implementation of entry and final exams of the candidates for judge and public prosecutors; curricula for continuous training of judges and prosecutors, training the trainers, as well as continuous training of legal associates and court staff; syllabi and teaching manuals etc.

EU support for the judiciary through IPA has also been substantial. From the € 25,316,000 within the IPA 2007, 2008 and 2009 around 8 million were for the justice sector offering support to key institutions such as the Academy for the Training of Judges and Prosecutors, the Public Prosecutors office for fight against organized crime and corruption and the Administrative Court.⁶⁶

The following table presents the projects funded over IPA 2007 to 2011 focusing on the judiciary

Table H.2: IPA Funding, Judicial Reform (€)

IPA	Project title	EC €	Description
2007	Support to more	1,100,000	Support implementation of Judicial Reform Strategy at

⁶⁶ Assessment of the Implementation of the Strategy for the reform of the Judicial System, Assessment Report, Funded by the European Union, Implemented by SOGES, May 4, 2010, p. 6.

	efficient, effective and modern operation and functioning of the Administrative Court		operational level by the establishment of the administrative justice implementing the Law on Administrative Disputes that transfers the first-instance-competence for the administrative disputes from the Supreme Court to the newly established Administrative Court.
2007	Assessment of implementation of the strategy for the reform of the Judicial system		Carry out an assessment of the state of play of implementation of the 2004 Strategy for the reform of the judicial system, thus identifying the concrete results the reform reached so far and the particular areas in which further steps are needed.
2008	Further strengthening of the judiciary	1,600,000	Support implementation of an investigative database on organized crime and corruption, further strengthen the institutional capacity of Academy for Training of Judges and Public Prosecutors.
2008	Implementation of the juvenile justice reforms	805,235	Support for implementation of the juvenile justice reforms.
2009	Support in implementation of the reform of the criminal justice system	1,270,000	Promote capacities of public prosecutors, law enforcement agents and other actors involved in implementation of reformed criminal legal framework with a focus on organized crime, corruption, financial crime and human trafficking
2010	Support to independent, accountable, professional and efficient judiciary and promotion of probation service and alternative sanctioning	3,007,500	Strengthen independence, accountability, transparency, professionalism and efficiency of judiciary. Improve system for alternative measures through probation service. Strengthen Judicial Council and Council of Public Prosecutors related to selection and appraisal of judges and prosecutors, court management and transparency of the judiciary. Directorate of Execution of Sanctions in the enforcement of alternative measures with a probation service
2011	Strengthen Min Justice for EU accession, enforcement of ECtHR decisions, improve knowledge on EU Court of Justice.	1,350,000	To strengthen the administrative capacities for alignment with and transposition of the European acquis, standards and practices in the area of Justice, Freedom and Security, knowledge of the case-law of the Court of Justice of the European Union and international human rights standards set out by the CoE.

2.2 Results Achieved

Progress has been made notably in the legal framework, however more has to be done in implementation in regards to judicial reform (EC 2011a, p. 38).

The legislative framework in judicial reform includes among others the amendment of the constitution with regards to the Judicial Council as well as a number of laws being adopted and amended such as the: Law on Courts; Law on Judges' Salaries; Law on the Academy for Training of Judges and Prosecutors; Law on Public Prosecutors; Law on Civil Procedure; Law on Criminal Procedure. A new framework for criminal procedure code envisaged to apply from November 2012 foreseeing a major shift towards a more adversarial system has been postponed for December 2013.

A number of policy documents have also been adopted, in particular the: Strategy of the Reform of the Criminal Legislation 2007 - 2011; Strategy for ITC in judiciary 2007 - 2010; Strategic plan of the Ministry of Justice 2011 - 2013; Action Programme of the Republic of Macedonia for implementation of the Penitentiary system reforms 2009 - 2014; Judicial Reform Strategy 2005;

In terms of the relevant institutional reforms in the judiciary it is important to refer to the establishment and/or reform of the Administrative Court and the High Administrative Court, the Judicial Council, the Prosecutorial Council, the Academy for Training of Judges and Prosecutors. Especially the establishment of the High Administrative Court in July 2011 filled the gap in the judiciary (EC 2011a, p. 39). One evaluation with regards to the Judiciary conducted with EC funding was done through the project: Assessment of the Implementation of the Strategy for the Reform of the Judicial System.⁶⁷ According to this assessment, the Strategy for the Reform of the Judicial System has been successfully implemented; a huge mass of legislation and important technical and organizational transformations were made; in judicial independence the way forward was made with the impressive system of formal guarantees (p.37-38).

With regards to judiciary independence, it is important that the latest reforms resulted with the removal of the vote of the Minister of Justice in the Judicial Council (EC 2011a, p.39). In addition, the Minister of Justice has been removed from membership in the Council of the Public Prosecutors. Some progress has been reported and further efforts are needed in evaluation and tenure of judges (EC 2011a, p. 43). Further safeguards in the evaluation and dismissal procedures were not introduced in the amendments of the Law on Courts independence of the judges. (2011 Progress Report p.13, 58). According to the Law on Court Budget, the budget increase will phase out in 2013. However, in practice inadequate funding hampers further progress.

With regards to efficiency and impartiality there is a fully installed Automated Court Case Management Information System (ACCMIS) as of 2010 that provides standardized and unified oversight of cases. The 2012 Progress Report notes a significant reduction of the backlog of cases from around 678.000 in 2010 to around 295.000 in 2011 though the Supreme Court and the Administrative Court continue to increase the numbers of their backlog cases (pg. 11). Emphasis on targets and deadlines linked to dismissal while may improve efficiency and reduce backlog of cases they also may affect the independence of the judiciary.

The amendments on the Law on Litigation entering into force in September 2011 should further shorten duration and promote mediation (2011 Progress Report p.11-12).

With regards to professionalism some new requirements by the amendment of the Law on Courts by including English language proficiency as well as experience requirements should further improve quality.

The available ROM reporting given below provide the following results

⁶⁷ Assessment of the Implementation of the Strategy for the reform of the Judicial System, Assessment Report, Funded by the European Union, Implemented by SOGES, May 4, 2010. This assessment is not evaluating specifically EC assistance in the field but rather doing an assessment of the judiciary and the implementation of the Strategy for the Reform of the Judicial System.

Table H.3: ROM Report Ratings, Judicial Reform Projects

Name of the Project	Year	€ million	Project Design	Efficiency	Effectiveness	Impact	Sustainability
Independent, reliable and functioning Judiciary	01.05.04 30.04.07	5.00	B	B	B	B	B
Outreach programme for the ICTY	01/01/07 31/12/08	1.19	B	B	B	B	B
Support to the Prosecutors' Network	17/04/08 17/04/10	1.66	B	B	B	B	B

As can be seen from the ROM Reports of these projects in the judiciary all of the projects were evaluated with B=good in each of the categories: project design, efficiency, effectiveness, impact and sustainability. If further addressed, for example, the Explanatory Comments of the Report⁶⁸ on the: **Establishment of an independent reliable and functioning Judiciary and the enhancing of the judicial cooperation WB countries** provide the following details:

The quality of project design was evaluated with B=good.⁶⁹ This Monitoring Report does not provide any info about the issue of the quality of the project design and why it was evaluated with B, except for the one sentence statement that it is based on the weakness that are identified by an EC mission and addressed in Indicative Program 2002-2006.

Efficiency of implementation to date was evaluated with B=good. Inputs and resources were well managed, the approach of a contractor more toward a twinning than a technical assistance partnership has helped conferring ownership to the beneficiaries.

Effectiveness to date was evaluated with B=good. Significant progress was recorded as a result of a direct and timely contribution by the project. With the Amendments of the Constitution aiming for Judicial Reform legal framework was largely in place by conferring powers from the Parliament to the Judicial Council with regards to appointing and dismissing Judges. Judicial Reform Strategy was established and the following laws and systems in regards to enforcement of civil judgement, litigation and mediation procedures, handling of misdemeanours were adopted, while a Law on Prosecutors is in the Parliament. As regarding the institutional framework an Administrative Court and a Judicial Training Academy were established.

Impact prospects was evaluated with B=good. These reforms in the Judiciary even though slow and incremental should reduce backlog of cases by reducing the burden of Courts, improve access to Courts and in the longer term increase public confidence in the Judiciary.

Potential sustainability evaluated with B=very good. Even though rated with B the explanatory note assess the prospects to sustainability as **very good**. There is a broad political consensus and the enacted reforms seem irreversible. The difficulty seems to be the lack of funds and external

⁶⁸ Country monitoring Report- former Yugoslav Republic of Macedonia, CARDS Regional- MK- Establishment of an Independent reliable and functioning Judiciary and the enhancing of the judicial cooperation in the WB countries, MR-40132.10-28/05/07, p.1-2.

⁶⁹ Note: A= very good; B= good; C= problems; D= serious deficiencies.

donor dependency. The key observation from this MR is that FYR Macedonia is active in reforming the Judiciary and more advanced than most countries of the region.

2.3 Findings and Conclusions

In regards to the judiciary, progress has been made but some core challenges remain (EC 2011a, p. 14). The legislative framework is mainly in place however it can be further amended to strengthen the independence, impartiality and efficiency. The 2012 Progress Report notes that there is no comprehensive judicial reform strategy or action plan (pg.11).

The implementation of the reform package in the judiciary between 2012-2015 is a significant change that will require great attention. Further organizational and institutional coordination is needed for the new legal framework provided by the Criminal Procedure Code. Organizational and institutional arrangements for such reform are not sufficiently advanced (2011 Progress Report p.11-12).

There is a lack of overall capacity of the public prosecutor office in regard to new Law on criminal procedure, on the protection by the prosecutor office of public goods and interests (strengthening the ex-officio) of public prosecutors and the basic prosecutor for fighting organized crime and corruption to have a primary role in this field.⁷⁰

More advanced improvement of the capacities of the judiciary are required as the capacity to process high profile cases remains weak. There is a lack of statistics (data) in the corruption cases (methodology for continuous tracking cases especially corruption).

The independence and the professionalism also need to be further strengthened.⁷¹ The amendment of the Law on Court Budget can provide for greater budgetary independence of the judiciary.⁷²

The Academy for training of judges and prosecutors should further reinforce its human resources and premises and the selection of candidates in the judiciary from the academy (2011 Progress Report p.11-13). Law on Courts and Law on Judicial Council ought to be amended to further insure competence and education of judges.

During the FYR Macedonia field visit, the 18 interviews conducted identified the main issues in the field of judiciary as: advanced training for the judiciary (11 of 18 interviews), in particular training on the new criminal procedure code as well as on organized crime (money laundering and asset seizure) and high corruption. Second, priority from the interviews relates to the independence of the judiciary (9 out of 18 interviews).

MIPD 2011-2013 in great deal focuses EU assistance on these issues. It foresees strengthening independence, efficiency, effectiveness and accountability of the judiciary (MIPD 2011-13,

⁷⁰ National Programme for prevention and repression of corruption, National Programme for prevention and reduction of conflict of interest with Action Plan 2011-2015, p.24

⁷¹ Communication from the Commission to the European Parliament and the Council, Enlargement Strategy and Main Challenges 2011-2012, Brussels 12.10.2011, COM (2011) 666 final, Annex 2, Conclusions on Macedonia, p.39.

⁷² National Programme for prevention and repression of corruption, National Programme for prevention and reduction of conflict of interest with Action Plan 2011-2015, p.24

Macedonia, p.18). In medium term the focus of assistance will be the criminal procedure reform, strengthen police investigation in pre trial period, improvement of the recruitment procedures of the judges and prosecutors of the Academy of training of Judges and Public Prosecutors. In particular for the judiciary:

- Long term projects or sequencing is required in order to address better the needed reforms in the judiciary which also require mentality change
- At times, the Judiciary should be enabled to separately proceed with programming and not through the coordination of the Ministry of Justice as it may be the case that potential for conflict of interest may exist (for example in assistance further strengthening the independence of the judiciary).
- Backlog of cases should be further addressed and assessed as a difficulty that still hampers the efficiency of the judiciary.
- Impact and sustainability should be measured in a comprehensive and systematic manner.
- Budgetary independence can further increase the independence.
- The new criminal procedure code foreseen major reform of the judicial system should be addressed by assistance fully as it represents a challenge, in particular for the prosecution.

3. Fight Against Organised Crime

In the field of police cooperation and fighting organised crime the country is considered advanced (2011 Progress Report p.69). The Progress Report 2011 further notes that some progress has been achieved fighting against organized crime.

The Progress Report 2011 in this sector focuses on a number of points. One of them is the establishment of the Centre for Suppression of Organised and Serious Crime within the Ministry of Interior. The Law on National Criminal Intelligence Data has been adopted becoming effective as of 1 January 2012. The National Criminal Intelligence Database – NID should be an instrument for Intelligence led policing and coordination and exchange in the frames of the Bureau of Public Safety. In regards to fighting organized crime the changes in the Criminal Procedure Code also aim in improving considerably the capacity to tackle complex organized crime as well as corruption cases (2011 Progress Report p.12).

In money laundering the capacities of the Office for the Prevention of Money Laundering and Financing of Terrorism (OPMLFT) were increased though the quality of investigations still needs to be strengthened. In regards to trafficking in human beings also some progress has been achieved primarily with the national shelter for victims of trafficking. In the field of drugs little progress is reported though the National Drug Strategy 2009-2012 Action Plan is being implemented. The country largely meets acquis requirements (2011 Progress Report p.69).

The MIPD 2011-2013 has a particular focus in fighting organized crime as it specifies areas of assistance: fighting organised crime, corruption, money laundering and trafficking of human beings and drugs.

3.1 Assistance Provided

Table H.4 shows the IPA projects funding the fight against organized crime:

Table H.4: IPA Projects, Fights against Organised Crime

IPA	Project title	EC €	Description
2007	Improve Capacities in Fight against Organized Crime,	299,942	Improve capacities of law enforcement bodies engaged in the fight against organized crime with special attention to the trafficking in human beings, including illegal migration.
2008	Corruption trial Monitoring Programme	55,278	Strengthen independence, efficiency and impartiality of judiciary in fight against corruption and organized crime. Also raise professional standards of judiciary and increase public trust.
2008	Integrated Border Management	5,950,000	Further strengthen integrated border management capacities in accordance with European/Schengen standards. Improve radio communication system and improve border police stations.
2008	Local response to trafficking in human beings	53,660	Stronger CSOs to reduce trafficking in human beings, raise public awareness and strengthen citizen/government cooperation to improve support to trafficked persons.
2009	Support in the implementation of the reform of the criminal justice system	1,270,000	Promote capacities of public prosecutors, law enforcement agents and other actors involved in implementation of reformed criminal legal framework with a focus on organized crime, corruption, financial crime and human trafficking
2009	Enhancement, Sustainability and Development of Active Civil Society	1,500,000	Strengthen CSOs in fight against corruption, organised crime, in protection of human rights, and CSO management and networking, including joint implementation of community-based activities and social services..
2009	Integrated border management	3,570,000	Support to police reform , to step up the fight against organised crime, including trafficking in human beings, arms and drugs..
2009	National Police and Criminal Law Reform	1,026,000	Strengthen field capacities of Bureau for Public Security, including the cooperation with the Public Prosecutors offices.
2010	Institution and Capacity Building of the Police Service	2,512,500	To strengthen border management, community policing and fight against organized crime, strengthen capacities for developing anti-corruption standards within the Organized Crime Department.
2011	Advanced intelligence gathering and analysis system	1,600,000	Development of an intelligence-led policing concept in the Bureau for Public Security, and enhancing capacities of the Department for Fight against Organized Crime

3.2 Results Achieved

The legal framework is largely in place with a number of relevant laws adopted and/or amended: the Law on money laundering prevention; Law on Police; Law on Internal Affairs; Law on Criminal Procedure; Law on border surveillance; Law on prevention of corruption; Law on conflict of interest; Criminal Code; Election Code; Law on Financing of Political Parties; Law of Free Access to Information of Public Character; Law on National Criminal-Intelligence Data etc.

A number of important policy documents have been adopted, including: National Action Plan for Fight against Organized Crime and Corruption; National Strategy for the fight against money laundering and financing of terrorism of 2006-2010 and in 2008 a Strategic Plan for the Office for Prevention of Money Laundering and Prevention of Terrorism 2009-2011 (see Annex H for full list).

In terms of institutional reform, the Directorate for money laundering prevention was established in 2003, renamed in 2008 the Office for Prevention of Money Laundering and Prevention of Terrorism; the Centre for Suppression of Organised and Serious Crime; the national shelter for victims of trafficking was also established; Specialized court units authorized for ruling in the cases of organized crime are established within the basic courts in Bitola, Tetovo, Skopje, Strumica and Stip.

Only two ROM reports are relevant in this context:

Table H.5: ROM Reports, Fight against Organised Crime

Name of the Project	Year	€ million	Project Design	Efficiency	Effective-ness	Impact	Sustain-ability
Combating money laundering (phase II)	07.09.07-26.09.09	1.35	B	B	B	B	B
Enhancing capacity on trafficking in children	01/03/07-28/02/10	1.24	B	B	B	B	B

Both of the Reports have been rated with Bs = good in all of the evaluation components which equals the results of the ROM Reports analysed in the judiciary sector. The ROM Report on **Combating money laundering (phase II)** provides some additional information:

- **The relevance and the quality of the design was evaluated with B=good.** The design in general is compatible with the policy documents and builds on previous support (phase I of the project).
- **Efficiency of implementation to date was evaluated with B=good.** There was a problem with the efficiency component due to the fact that the two twinning partners had disagreements, with quite poor reporting standards, with very little analytical content. As a result of the satisfactory contribution by the project the capacities of the Office for Prevention of Money Laundering and Prevention of Terrorism were strengthened.
- **Effectiveness to date with B=good.** The Office is consolidated, it is a separate legal entity and the awareness is generally increased in the public. The project played a role in advancing legislation also inter alia by foreseeing penalties for the institutions that do not cooperate with the Office.
- **Impact prospects evaluated with B=good.** The project helped the development of legislative and institutional framework and there is a concrete impact such as number of detected suspicious transactions.
- **Potential sustainability evaluated with B=very good.** Budget constraints are a difficulty, though as mentioned the legislative and institutional framework provides good bases for sustainability.

3.3 Findings and Conclusions

EU support will continue to fight organized crime including money laundering, human trafficking and drugs by among others via training in order to increase the capacity of the judiciary and of the law

enforcement officials for proactive investigations and witness protection programs. (MIPD 2011-13, Macedonia, p.28).

According to MIPD 2011-2013, further efforts are needed to complete the criminal procedure reform, strengthen the police investigation in the pre-trial period, improve recruitment procedures for the graduates of the Academy for training of judges and public prosecutors, and the fight against money laundering. Within this large sector, cooperation will equally focus on home affairs issues such as the police investigation in the pre-trial period and border management. Improvement of the capacity of the judiciary to tackle the organized crime and the corruption is further required. It seems that organizational and institutional arrangements for such reforms are not sufficiently advanced (2011 Progress Report p.11-12).

- The government has adopted a Strategy and accompanying Action Plan for the establishment of the National Coordination Centre however, the relevant budgetary allocations to accompany these instruments are missing and the Centre has not been established so far (2011 Progress Report p.67).
- The Reform of Criminal Procedure Code should be implemented fully, in particular the organized crime sections of the judiciary and prosecutions should be fully operational in the sector.
- **Impact and Sustainability** in fighting organized crime should be further measured on specific indicators such as: established track records including in particular high profile cases.

4. Fight Against Organised Crime

Fight against corruption has received special attention in the MIPD 2011-2013 for the Western Balkan countries. Improving governance and reducing corruption has been identified as one of the three priorities for IPA support (MIPD 2011-13, Macedonia, p.3). In FYR Macedonia, financial assistance will continue to focus to fight corruption which is prevalent in many areas and needs to be addressed (MIPD 2011-13, Macedonia, p.13).

The legal and institutional framework for fight against corruption in the FYR Macedonia is largely in place. According to Progress Report 2011, while limited progress in the anti-corruption was made, implementation of the legal framework has not fully taken place. The 2012 Progress Report (pg.12) notes further progress in the legal framework, notably in the amendments to the Law on Financing of Political Parties and the Law on Prevention of Conflicts of Interests improving verification and enforcement powers. The National Program for Adoption of Acquis foresees further increase in the efficiency and effectiveness in fighting corruption. Similarly, the Accession Partnership outlines the need to track implementation of legislation; implement recommendations of the responsible national institutions as well as of the GRECO etc.

Particularly, the Progress Report 2011 (p.13) identifies a decrease in corruption by the border police as the result of programs, trainings, monitoring and salary increases.

The issue of lack of budget and staff also is reflected in the State Commission for the Prevention of Corruption (SCPC), the Anti-corruption Unit within the Organised Crime Department of the Ministry of Interior and the Basic Public Prosecutor's Office for the Fight against Organised Crime and Corruption as they all remain understaffed and underfinanced (2011 Progress Report p.14, 60). The

capacity of the judiciary to process high profile cases of corruption remains weak (2011 Progress Report p.14).

The National Programs for fighting corruption provide a good overview of the areas more prevalent in need to fighting corruption. The National Program for prevention and repression of corruption with Action Plan of 2007-2011 identified six important pillars in fighting corruption. Further on, the National Programme for prevention and repression of corruption, National Programme for prevention and reduction of conflict of interest with Action Plan 2011-2015 with budget support (December 2011) identified 11 sectors which are more vulnerable in regard of corruption and conflict of interest.⁷³ While all are relevant, some are more important to fighting against corruption and the rule of law and require attention. In regards to **the political sector** of importance is the financing of political parties therefore the election code should incorporate political party as the current reporting lacks mechanism to discuss real financial means and their sources and allocation. In the **judiciary**: statistics on corruption cases should be established; transparency should be improved (web pages be updated, publication of annual reports), the capacity of the public prosecutor office in fighting organized crime and corruption should be strengthened. With regards to **Law Enforcement Agencies** coordination and efficiency to be strengthened as well as transparency and accountability in asset declaration of public officials should be improved. **Customs** and especially customs administration are considered to be at high risk for corruption by Progress Report 2011 and therefore represent a special sector in the National Strategy. In the **Public Sector** of importance are the public procurement and the independence of the Public Procurement Bureau (and its director). According to the 2012 Progress Report corruption in public procurement is a serious problem (pg. 12). With regards to **civic organizations** there is real risk for corruption and conflict of interests with allocation of the public finances due to lack of transparency.

4.1 Assistance Provided

The following IPA 2008-2010 projects focused on fighting corruption:

Table H.6: IPA Projects, Fight against Corruption

IPA	Project title	EC €	Description
2008	Corruption trial Monitoring Programme	55,278	Strengthen independence, efficiency and impartiality of judiciary in fight against corruption and organized crime. Also raise professional standards of judiciary and increase public trust.
2008	Further strengthening of the judiciary	1,600,000	Support implementation of an investigative database in organized crime and corruption, to further strengthen the institutional capacity of the Academy for Training of Judges and Public Prosecutors.
2008	Drafting action plans for prevention and repression of	165,968	To assist follow-up national strategic documents in the area of prevention and fight against corruption and conflict of interest, The project will also support the development of an efficient monitoring mechanism for the implementation of the above-mentioned

⁷³ National Programme for prevention and repression of corruption, National Programme for prevention and reduction of conflict of interest with Action Plan 2011-2015 the political sector; the judiciary; public administration; law enforcement agencies; customs; local government; public sector; private sector; health, labour and social policies; education and sport; media and civic organizations.

	corruption		strategic documents.
2009	Support reform of the criminal justice system	1,270,000	Promote capacities of public prosecutors, law enforcement agents in implementation of reformed criminal legal framework : organized crime, corruption, financial crime and human trafficking
2009	Enhancement, Sustainability and Development of Active CSOs	1,500,000	Strengthen CSOs in fight against corruption, organised crime, in protection of human rights, and CSO management and networking, including joint implementation of community-based activities and social services..
2009	Support to the National Police and Criminal Law Reform	1,026,000	The project purpose is to strengthen the field capacities of the Bureau for Public Security, notably the units on regional and local level in the area of criminal investigation, including the cooperation with the Public Prosecutors offices.
2010	Support to independent, accountable, professional and efficient judiciary	3,007,500	Strengthen independence, accountability, transparency, professionalism and efficiency of judiciary. Strengthen Judicial Council and Council of Public Prosecutors related to selection and appraisal of judges and prosecutors, court management and transparency of the judiciary.
2010	Support to efficient prevention and fight against corruption	1,349,000	To improve implementation of national legal framework for fight against corruption, strengthen national mechanisms for prevention and fight against corruption, to further promote the cooperation between the State Commission for Prevention of Corruption (SCPC), the judiciary, law enforcement agencies.
2010	Institution and Capacity Building of the Police Service	2,512,500	To strengthen police capacities for border management, community policing and fight against organized crime. To strengthen capacities for developing anti-corruption standards within the Organized Crime Department

4.2 Results Achieved

The legal framework in regards to fighting corruption is largely in place. In regards to the legislation, the following laws have been adopted or amended: the Law on prevention of corruption; Law on conflict of interest; Electoral Code contains relevant provisions in regards to financing of campaigns, transparency etc.; Law on Financing of Political Parties; Criminal Code incriminating corruption; Law on Prevention of Conflict of Interests, Law on Money Laundering and other criminal proceeds and terrorist financing of 2008; Law on Criminal Procedure; Law on management of seized property, property gains and objects seized in criminal and misdemeanour procedure. In addition the country is a party and has ratified a number of international treaties in the area of fight against corruption.⁷⁴

A number of strategic documents in the field of anticorruption have also been developed and adopted: the National Programme for prevention and repression of corruption with Action Plan in 2003; Annex to the National Programme for prevention and repression of corruption- measures for prevention and repression of corruption in local self-government with Action Plan in 2005; National Programme for prevention and repression of corruption with Action Plan 2007-2011; National Programme for prevention and reduction of conflict of interest with Action Plan in 2008; National

⁷⁴ Party to International Treaties ratified: Criminal Law Convention on Corruption ratified in 1999 and the Protocol in 2005 (ETS No.191), Civil Law Convention on Corruption ratified in 2000, European Convention on Mutual Assistance in Criminal Matters ratified in 1999 and additional protocol, Convention for Money Laundering, Freezing and Confiscation of Criminal Related Proceeds in 2000, UN Convention on transnational organized crime ratified in 2004, UN Convention Against Corruption Ratified in 2007.

Programme for prevention and repression of corruption, National Programme for prevention and reduction of conflict of interest with Action Plan 2011-2015 with budget support (of December 2011); Strategy for establishment of a National Centre for coordination of the activities related to the fight against organized crime and corruption, adopted in March 2011; Action plan of the Government for Fight against Corruption 2007-2011.

The institutional framework is mainly focused in the State Commission for Prevention of Corruption as well as in other institutions such as the: Public Revenue Office; Anti-corruption Department, Public Prosecutor Office for Fight against Organized Crime and Corruption, Finance Police, Agency for managing of confiscated property and property gains in criminal and misdemeanour procedures etc.

The 2012 Progress Report notes that having in place the institutional and legal framework greater efforts are needed in the implementation of the existing laws (pg.13). In regards to ROM Reports in this sector, however, none were available to the team.

4.3 Findings and Conclusions

Besides the implementation of the existing legal framework, the amendment of the same to further increase effectiveness and efficiency is required.

National Programme for prevention and repression of corruption, National Programme for prevention and reduction of conflict of interest with Action Plan 2011-2015 (p.23-30, 45, 70-5. 108-112) specifies the following reforms: due to risk factors for corruption and conflict of interest the amendment is needed of the Law on Courts, Judicial Council, Public Prosecutors, Council of Public Prosecutors to prevent the possibility for a judge or prosecutor to be engaged in other professions or work engagements; the law on public procurement should be amended to provide for the independence of the Public Procurement Bureau and its director; financing of civic organizations the reforming of the: code of good practices for financing of civic organizations, reforming regulations on greater accountability for their work, amending the law on associations and foundations in regards to attaining of organizations of public interest is needed. In particular, in fighting corruption:

- The main focus on fighting corruption is in the implementation of the legislation and improvement of cooperation between the various institutions.
- A general track record should be in place. In particular, a track record for high level cases should be established.
- The Election Code and the political party financing and the Law on Banking needs further improvement to fight corruption and provide access to bank accounts of the political parties.
- Amendment of the Law on State Commission for Prevention of Corruption to be also able to check and disclose assets and establish a registry of public officials is required.⁷⁵
- At local level, particularly in the area of petty corruption the specialization of law enforcement agents and the judiciary is still insufficient (2011 Progress Report p.14).

⁷⁵ National Programme for prevention and repression of corruption, National Programme for prevention and reduction of conflict of interest with Action Plan 2011-2015 p.29-30, 70-75.

5. Looking Ahead

When looking ahead regarding how EC resources for Rule of Law can be better programmed, the team has relied on various sources of information, as provided below.

5.1 Relevant Studies and Evaluations

There are a number of evaluations that seem important and relevant to review before advancing into the next parts.

These evaluations include inter alia specific ones that focus in particular in FYR Macedonia such as the CARDS evaluation and the available ROM Reports as well the ones with a general focus on WB such as the Mid-term Meta Evaluation of IPA Assistance and the forward looking evaluation of future pre-accession financial instruments beyond 2013⁷⁶. Based on these previous findings and the findings of the field mission some preliminary statements will be made.

5.1.1 Ad Hoc Evaluation of the CARDS Programme

An evaluation of the previous CARDS Assistance for FYR Macedonia was conducted and a report was published in 2009. The evaluation gives some general assessments on the assistance provided but also more relevant to this evaluation also in regards to the sector of Justice and Home Affairs.

Accordingly, the general evaluation exemplifies the following: satisfactory relevance and impact, efficiency and effectiveness could be improved, sustainability is the weakest aspect of the assistance, insufficient involvement of the beneficiaries in programming resulting with lack of ownership in particular cases and lack of impact and sustainability (MIPD 2011-13, Macedonia, p.6). More specifically:

- **Relevance: satisfactory.** While the overall design reflected well in the country's needs, national stakeholders have not always been involved resulting in lack of ownership and due to lack of flexibility some interventions in the inception phase were not amended.
- **Efficiency: moderately satisfactory.** There were delays between planning and implementation, lack of flexibility as well as lack of national capacities. Pre-conditionality mostly was not used as a tool.
- **Effectiveness: moderately satisfactory.** While there were achievements of objectives there were also partially achieved or delayed ones as the result of insufficient commitment by certain institutions. Stakeholders in the programming phase were not always consulted resulting with lack of commitment and implementation. This can be potential problem for IPA as well as it remains unfamiliar to many stakeholders.
- **Impact: satisfactory.** A number of positive impacts as some sectors, institutions and capacities were significantly strengthened.
- **Sustainability: moderately unsatisfactory.** It is the weakest aspect of CARDS among others as a result of lack of ownership in the designing phase.

⁷⁶ The Evaluation to support the preparation of pre-accession financial instruments beyond 2013, Commissioned by DG ELARG, 13 June 2011.

Table H.7 shows the assessment for **Justice and Home affairs** in general:

Table H.7: Assessment of Justice and Home Affairs support under CARDS funding

	Justice	Home affairs
RELEVANCE	Satisfactory	Satisfactory
To what extent do the programmes/projects address the needs and priorities identified in the Progress Reports, SA Agreements, Strategy Papers, Partnerships and country/sector strategies?	Highly Satisfactory	Highly Satisfactory
To what extent have the stakeholders in the beneficiary countries and in the line DGs been involved in the needs assessments and contributed to the design of the programmes/projects?	Moderately Satisfactory	Moderately Satisfactory
To what extent the programmes were designed in a manner relevant to the needs and problems identified in the partner countries?	Satisfactory	Satisfactory
EFFICIENCY	Moderately Satisfactory	Moderately Satisfactory
To what extent have the outputs of the projects been produced, to which costs have they been produced and have they been produced within timeframe?	Moderately Satisfactory	Satisfactory
Could similar results have been achieved at a lower cost or more results to the same costs (value-for-money)?	Moderately Satisfactory	Moderately Satisfactory
To what extent have the beneficiaries been ready to absorb the CARDS funding and the pre-conditions for implementing the projects been in place?	Moderately Satisfactory	Moderately Satisfactory
EFFECTIVENESS: To what extent have the operational objectives of the programmes/projects been achieved or are in the process of being achieved with respect to planning provisions?	Moderately Satisfactory	Satisfactory
IMPACT: To what extent have the projects/programmes' interventions produced political, social, economic or environmental impacts?	Satisfactory	Satisfactory
SUSTAINABILITY: Are the results and impacts of the programmes/projects likely to continue after EU funding ends?	Moderately Unsatisfactory	Moderately Unsatisfactory

5.1.2 ROM Reports

When looking at the ROM reports referred to above, the following table shows similarity between the overall CARDS evaluation, CARDS evaluation in the fields of justice and home affairs and the six ROM report evaluations in terms of: project design/relevance, efficiency, effectiveness, impact and sustainability:

Table H.8: Results reporting compared

	CARDS	CARDS		6 ROM Evaluations
	General Evaluation	Justice	Home Affairs	
Project Design/ Relevance	Satisfactory	Satisfactory	Satisfactory	B,B,B,B,B,B
Efficiency	Moderately Satisfactory	Moderately Satisfactory	Moderately Satisfactory	C,B,B,B,B,B
Effectiveness	Moderately Satisfactory	Moderately Satisfactory	Satisfactory	C,B,B,B,B,B
Impact	Satisfactory	Satisfactory	Satisfactory	B,B,B,B,B,B
Sustainability	Moderately Unsatisfactory	Moderately Satisfactory	Moderately Satisfactory	C,B,B,B,B,B

As can be seen from this analyse none of the evolutions: CARDS General Evaluation/ CARDS Justice/Home Affairs or the ROM Reports have graded any of the component with the highest possible grade of HS=Highly Satisfactory (CARDS) nor A=Very Good (ROM Reports). This however, should not be a disappointing factor as overall the evaluations grade all the components in average with relatively high grades. In particular, there seem to be a better performance in IPA then CARDS as 5/6 ROM Reports received all B's in the evaluation while in CARDS there is a greater variety of grades in range.

5.1.3 Mid-term Meta Evaluation of IPA Assistance

According to MIPD 2011-2013, the Mid-Term Meta Evaluation of IPA assistance confirmed CARDS evaluation findings.

Project selection has not been always objective in selecting most relevant and cost effective projects. Low administrative capacity, lack of ownership and insufficient political support are the main obstacles for achieving impact and sustainability (MIPD 2011-13, Macedonia, p.6-7).

To improve IPA programming and increase ownership, the national IPA coordinator should be more active in the preparation, selection, prioritisation, sequencing and quality assessment of project proposals (p. iii). In BiH and the former Yugoslav Republic of Macedonia IPA 2008 there were temporary problems with the institutional set-up risking timely implementation of assistance thus limiting potential delays (p. v).

With regard to effectiveness, it is difficult to assess as much of IPA projects are ongoing though the expectations are that the objectives will be delivered; it is strongest in areas related to the alignment/adoption of the acquis. Beneficiary involvement in the project design and implementation

is a key for efficiency, effectiveness as well as to ensure impact and sustainability, follow-up is required: in 3-6 months for twinning and in 6-12 month the beneficiary should submit reports on impact and sustainability (p.vi)

The quality of sequencing projects in MK was generally good and it can be improved if one would directly follow the other.

Yet, it is challenging due to the long-time distance between programming and implementation.⁷⁷ Effectiveness and impact can be improved if key IPA programming documents would further enhance their quality. In CRO, MK and TUR the MIPDs were substantially better than the documents for pre-IPA programmes (p.41).

5.1.4 Evaluation of Support to the Preparation of IPA Assistance beyond 2013

This evaluation among others makes the following important points: the current instrument should continue beyond 2013; the role of regional programmes and the sector approach should be strengthened; MIPD's should be genuinely multi-annual and the planning of activities should be multi-annual; beneficiary and stakeholder involvement in the programming should be strengthened as well as more NGO involvement; there should be incentive mechanisms in place for good performance as well as systematic use of conditionality when disbursements are not met; beneficiaries should have access to the various components if they are willing and able to implement them and the component structure should not limit effective use of resources.⁷⁸

The financial support is provided through relatively complex planning and implementation procedures which have contributed to some delays (ibid pp. 2-3). Monitoring and evaluation should be based on the progress relative to the: path to accession; national strategies; achieving programme, sector and measure level results (ibid p. 5).

5.2 IPA Assistance: Lessons Learned

The preliminary findings identified below are based on the results of 18 interviews undertaken in FYR Macedonia.

The structure of the interview in general terms was sequenced into the following main parts: key factors for success to rule of law projects, key challenges and the key priorities suggested/recommended.

The most often mentioned factors of success for RoL projects as mentioned by the sources are: 1) the existence of political will, ownership and commitment by beneficiaries; 2) the length of the projects: long term projects seem more successful and 3) the quality of international staff/expert participating to these projects and trust. Other important factors are the commitment of donors the focus of the project on achieving impact and the flexibility of the implementation.

The main challenges in terms of RoL programming related to the IPA procedures, the inadequacy of the progress report as a tool to assess progress on RoL and a fatigue towards EU integration.

⁷⁷ EC Funded Mid-term Meta Evaluation of IPA Assistance, Evaluation Report Final Version, 22/02/2011. p. 16.

⁷⁸ The Evaluation to support the preparation of pre-accession financial instruments beyond 2013, Commissioned by DG ELARG, 13 June 2011.p.1-5 also see table 2.1 at p.28-29.

The main priorities as listed by the informants are: RoL strategies, practical training for judges and prosecutors, civil society and judicial education and awareness.

Besides being already addressed to a certain degree within the sectors above, much of the details of the field visit findings will also be used here together with the evaluations already discussed above.

5.2.1 Programming Financial Assistance

In regards to programming, having in mind among others much of what was stated above these are some of the key aspects:

- **IPA Procedures:** are considered to be rather complex, lengthy and requires significant capacity by stakeholders. The large majority of the sources (11) consider IPA procedures long and complex. The large majority of informants underline the fact that IPA instrument does not permit to reconcile national priorities with EC assistance. Especially, NGO's complained during the interviews that they lack capacities to apply for IPA projects. The time between the programming and the implementation takes years and the lack of flexibility for change very often in such a dynamic field as the rule of law (judicial reform, organized crime, fight against corruption) at times makes the assistance outdated. In addition, because of the long preparation period, beneficiaries complain that IPA cannot be used to address criticisms expressed in the Progress Reports immediately in the following year.
- **Ownership:** involvement of the beneficiary from the design phase of the project is a key to ownership and effects efficiency, effectiveness, implementation and sustainability. Projects should be based on real needs identified by the beneficiaries in their sector strategy.
- **Decentralized Management of IPA:** while offering many opportunities as authorities are responsible for identifying and implementing IPA assistance it also has the potential to become a source of difficulty. This process is considered by many (9) as a source of potential risk in terms of delays in implementation but also in terms of potential conflict of interest. In addition it requires further development of absorption capacities to address the increase of the burden of the national authorities in the design and implementation of IPA assistance. In particular, there may be cases of lack of capacity for Decentralized Management. Some beneficiaries complained that the EUD in FYR Macedonia delays the process too often and is not very expedient in giving ex ante approvals (16 steps are required). Several also pointed to a potential for conflict of interest when for example the Ministry of Justice would need to support projects focusing on independence of the judiciary.
- **Sector Approach:** some of the evaluations praise the approach as one that is coherent and providing focus. While it may present some obvious advantages there should be prudence and an assessment of the capacities to take on this approach especially in some sectors.
- **MIPD's:** there are positions that the MIPD's should be more focused and have specific objective indicators as mentioned above.
- **Progress Report:** influences much of the EU integration process including assistance and programming. But due to its lack of flexibility, IPA cannot address Progress Report criticism during the following year as it takes at least two years from approval to implementation of an IPA

project. A number of informants also noted that the Report is too vague and sometimes political. Many (5) underline the fact that it is not adequate for assessing RoL progress as it is too vague to identify concrete weaknesses and propose practical solutions. A Report that was more detailed and structured in the RoL field could be an important tool to guide beneficiary towards progress and to facilitate coordination among donors.

- **Fatigue towards EU integration:** many informants (9) note a fatigue towards EU integration. In the enlargement process public support is the key to the success. Several sources recommend adopting a development approach rather than an integration approach on RoL. These sources indicate that the current “integration approach” of EU assistance works as long as there is a credible chance of integration of Macedonia into the EU. Now that the perspective for a rapid EU integration is more distant an integration approach could become counterproductive.

5.2.2 Implementation of Activities

With regards to implementation of activities a number of key points have been raised:

- **Ownership:** in the implementation phase of the project, ownership is key to success as they need to be steered by the beneficiary. There has to be political will at a higher level and real need at the institutional level followed by committed staff to implement the activities.
- **Lack of resources:** There is a lack of adequate of human and financial resources for *acquis* implementation. As seen from this document as well in a number of cases there is a lack of sufficient budget to further enhance the capacities of the various institutions in all the three sectors. This issue should be addressed either by increased funding or further commitments by national authorities in order to achieve the required impact.
- **Delays in implementation:** on top of the formal requirements in regards to time envisaged between the time of programming and implementation additional delays in IPA are quite evident. The implementation is at times delayed for a number of reasons including lack of capacities by the contractor, stakeholder and quite often due to lack of flexibility.
- **Type of assistance:** in a number of evaluations and during the interviews it was mentioned that twinning is preferred as a type of assistance as the experts are in the beneficiary and are daily committed to assist them.
- **International expertise:** experts working in a RoL projects need to be experienced and motivated. Their inputs need to be based on clear TORs. Beneficiaries are not involved in their selection though the TORs and CV need to be endorsed by beneficiary authorities prior to their engagement. Legal experts coming from common law systems have difficulties in a civil law system as FYR Macedonia. Twinning resident advisers are considered particularly effective.
- **Length of projects:** Long term or several phases of the same project is mentioned as a factor of success. It is stressed that RoL assistance should be lengthier as it is complex requiring legislative and institutional reform, implementation and quite often mentality change as well. Such an approach through IPA is complex as first there is a limitation on the length of the project and second sequencing also is rather complex and requires time.

- **Incentives/Conditionality:** the idea of having incentives for good performance and the conditionality for bad performance are often discussed. Incentive (sometimes as disguised conditionality) seems to be a positive approach that would enhance the efforts for better performance and its use should be reviewed.
- **Commitment of donors:** the commitment of donors reflected by the willingness to establish long term relations with the beneficiary and by having relevant experts in post for long period. Commitment of donors is also reflected by the **flexibility** of the assistance and its ability to adjust to the needs of the beneficiary.

5.2.4 Monitoring and Reporting Results

This seems to be a rather difficult aspect of EC assistance. In particular there is:

- **Lack of established indicators in RoL and the sectors addressed here:** there are no formally accepted specific set of indicators. The approach by the MIPD is that for the future the following indicators are foreseen to assess EU support: reduction of the length proceedings and backlog of cases, effective and more frequent use of special means of investigations, number of cases of organized crime, corruption, money laundering, trafficking, and drugs been successfully prosecuted; trainings; increase of crime recovered proceeds, number of conflict of interest cases investigated and by SCPC; improved prison conditions (MIPD 2011-13 p.19).
- **Follow-up is required:** It is essential to do a follow up of assistance and this is inexistent as a formal procedure for all projects. One idea is to have in 3-6 months for twinning and in 6-12 month the beneficiary should submit reports on impact and sustainability.⁷⁹
- **Focus on impact:** a particular focus on impact is required for an effective rule of law assistance. Impact should be assessed systematically and comprehensively. EC assistance should focus on impact in the future especially having in mind that much of the legislative and institutional framework is in place.
- **Access to evaluations:** as this project is facing this particular difficulty it should be stressed that making the few evaluations available also open to the public would enhance further pressure for better use of the assistance provided.

5.3 Looking Ahead

Each of the previous sections, including the last one has had its set of conclusions which are relevant to this document. This part will only focus on the major recommendations and it does not exclude any of the previous more specific ones.

IPA Assistance (and CARDS as well) has been an essential instrument in providing assistance to FYR Macedonia and WB countries in the accession process and in particular in the RoL in judicial reform, organized crime and fight against corruption. Mainly through this assistance, the legislative and institutional framework in these sectors is now largely in place in FYR Macedonia.

⁷⁹ EC Funded Mid-term Meta Evaluation of IPA Assistance, Evaluation Report Final Version, 22/02/2011, p. vi.

As mentioned by the Commission, the current IPA regulation has proved to be efficient and effective and the proposal for the new financial instrument will draw from this experience (EC COM (2011) 666 final, p.20-21) Technical assistance will be strengthened further with the enlargement strategy priorities, with more strategic and focused assistance and by making procedures more flexible (ibid pp. 21, 25).

The main recommendations from the FYR Macedonia based on the experience are the following:

1. **Flexibility of IPA** should be addressed as far too much of the implementation difficulties are attributed to rigid rules for IPA funds programming, implementation and modifications.
2. **Ownership** by the beneficiary through stronger engagement in programming and implementation is critical, and time constraints should not undermine the ability for such participation to be real. Ownership can also be strengthened during implementation if proper incentives for this can be found, though there is a need to be realistic about the value of different kinds of incentives: in a number of states, including Albania, achieving EU visa liberalization was a powerful incentive while it lasted – and as soon as that objective was achieved, much of the larger commitment seems to have weakened.
3. **Impact should be monitored** as part of a systematic and comprehensive approach to tracking performance regarding judicial reform, fighting organized crime and corruption. In general it is considered that much of the legal and institutional framework in rule of law and the sectors under review is in place and now the focus should be more on tracing through the impact of their implementation.
4. **Not all IPA Programming in the sector should be coordinated by the Ministry of Justice** since situations of conflict of interest may arise. Examples pointed to could be strengthening the independence of the judiciary as this may reduce executive power (such as budget control).
5. **Decentralized Management of IPA should be reviewed:** While DIS is an important step towards national ownership, national implementation is also experienced as causing undue delays and bureaucracy, in part because the country may not have sufficient capacity for successful implementation. Cumbersome procedures – such as for ex ante approvals which require 16 steps – also puts major demands on implementers. A review to identify bottlenecks and possible solutions would be useful.
6. **Justice sector support requires a long term approach.** Modernizing and making more efficient an entire system requires a strategic vision and long-term view to ensure that not only formal frameworks and capacities are in place, but that implementation is largely in line with intentions. This involves not simply capacity development of individuals, but also that the larger “corporate culture” of the sector is transformed, which is a slower process – but fundamental to long-term impact and sustainability. Programming of IPA support thus needs to bear this time perspective and the long-term performance objectives in mind.
7. **The new criminal procedure code is the next priority for the judiciary/prosecution.** The new code is the next major reform focusing more on an American system and transferring much of the powers to the prosecution will be the major challenge and an area of great need for support.

Annex I: Country Report, Montenegro

1. Country Strategy and Programme

In June 2006, the Montenegrin Parliament declared independence following a referendum. In January 2007, the European Council adopted the European Partnership (EP) for Montenegro. The EP and the National Programme for Integration (NPI) set priorities for the first two IPA components (institution building and regional cooperation). The EP stresses the need to strengthen judiciary independence, rationalise the court system, modernise proceedings and improve administration, provide adequate and sustainable financing for the judicial system. Moreover, it underlines the need to improve prison conditions, in particular as regards vulnerable groups. The key priorities of EP indicate the need to reform the judicial system. Within the framework of political criteria specific attention is given to good management, justice reform, strengthening and implementation of the rule of law. The NPI 2008 – 2012 includes a review of administrative capacity and employment plan and a financial assessment of its implementation. In addition, it aims at consolidating the rule of law and democracy, promoting human rights, and enhancing commitments to regional initiatives.

The Stabilisation and Association Agreement (SAA) between Montenegro and the EU was signed in October 2007 and entered into force in May 2010. The SAA states, under Article 80, that in their co-operation on justice, freedom and security, the Parties shall attach particular importance to the consolidation of the rule of law, law enforcement and the administration of justice in particular. The article stresses that co-operation will aim at strengthening the independence of the judiciary and improving its efficiency.

Montenegro presented its application for membership of the European Union on 15 December 2008. In 2010, the Commission issued a favourable opinion on Montenegro's application, identifying 7 key priorities that would need to be addressed for negotiations to begin:

- Improve the legislative framework for elections in line with the recommendations of the OSCE-ODIHR and the Venice Commission; strengthen the Parliament's legislative and oversight role.
- Complete essential steps in public administration reform including amendments to the law on general administrative procedure and the law on civil servants and state employees and the strengthening of the Human Resources Management Authority and the State Audit Institution, with a view to enhancing professionalism and de-politicisation of public administration and to strengthening a transparent, merit-based approach to appointments and promotions.
- Strengthen rule of law, in particular through de-politicised and merit-based appointments of members of the judicial and prosecutorial councils and of state prosecutors as well as through reinforcement of the independence, autonomy, efficiency and accountability of judges and prosecutors.
- Improve the anti-corruption legal framework and implement the government's anticorruption strategy and action plan; establish a solid track record of proactive investigations, prosecutions and convictions in corruption cases at all levels.
- Strengthen the fight against organised crime based on threat assessment and proactive investigations, increased cooperation with regional and EU partners, efficient processing of

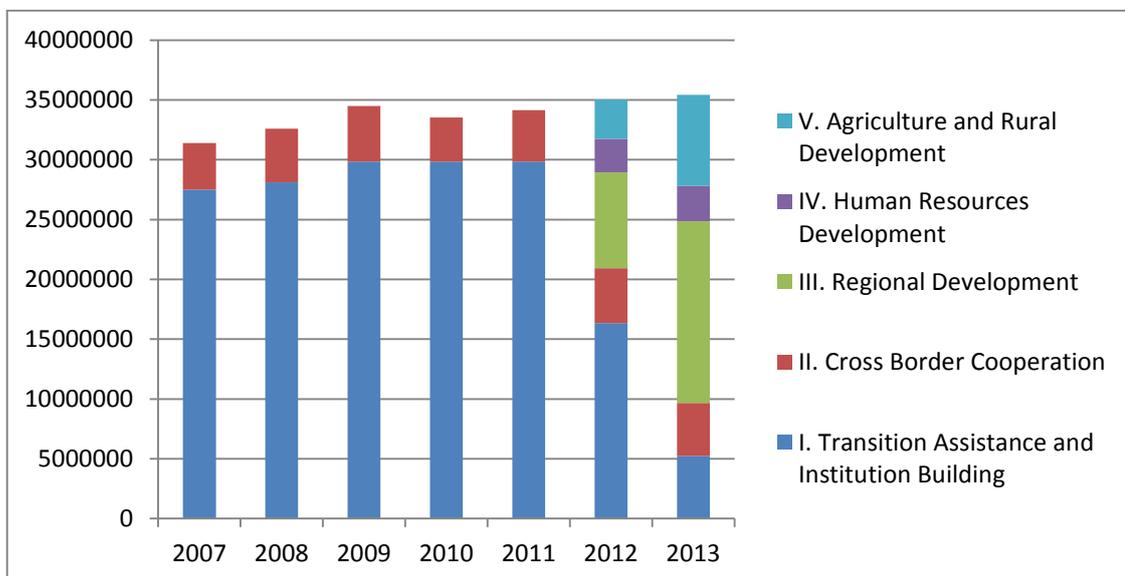
criminal intelligence and enhanced law enforcement capacities and co-ordination. Develop a solid track-record in this area.

- Enhance media freedom notably by aligning with the case-law of the European Court for Human Rights on defamation and strengthen cooperation with civil society.
- Implement the legal and policy framework on anti-discrimination in line with European and international standards; guarantee the legal status of displaced persons, in particular Roma, Ashkali and Egyptians, and ensure respect for their rights. This will include the adoption and implementation of a sustainable strategy for the closure of the Konik camp.

The Council granted Montenegro candidate status In December 2010. In December 2011, the Council launched the accession process with a view to opening negotiations in June 2012. Accession negotiations started in June 2012.

Montenegro has been receiving financial assistance from the EU since 1998. Overall, between 1998 and 2010 the EU committed over € 408 million to Montenegro. From 1998 to 2006, this included EU CARDS assistance worth € 277 million. In 2007, CARDS assistance was replaced by the Instrument for Pre-Accession Assistance (IPA) which extends to 2013. As of 2007 the funding is over the Instrument for Pre-Accession Assistance (IPA). For the seven years 2007-2013, a total of € 235.2 million has been provided or is foreseen. The amounts broken down by year and component are shown in figure 2.1 below. There is a stark gradual decrease in funding levels for Component I (Transitional Assistance and Institution Building) from 2012 onwards.

Figure I.1: IPA Assistance, Montenegro, 2007-2013, in €



In April 2007 a major reorganisation of the structures for European integration (EI) took place by establishing three institutional mechanisms for co-ordination:

- The bodies for co-ordination of European integration consist of the (i) *Collegium* for European integration, as the top Government's political body governing the EU accession and dealing with the political and strategic issues, and chaired by the Prime Minister; (ii) *Commission for*

European integration, chaired by the Deputy Prime Minister for European Integration, as the main expert body for horizontal co-ordination of the accession process, while also dealing with the co-ordination of pre-accession assistance. The Deputy Prime Minister for European Integration acts at the same time as the National IPA Coordinator – NIPAC; (iii) *Groups for European integration* as main expert co-ordination bodies competent for various areas of the Acquis, equivalent to the structure of sub-councils from the Stabilisation and Association Agreement (7 taskforces established).

- The Secretariat for European Integration (SEI), which is competent for co-ordination of the European integration process, legal support to the Stabilisation and Accession Process, co-ordination of inter-ministerial preparations for negotiations and co-ordination of negotiations with EU, co-ordination of preparation of key documents related to the process, monitoring implementation of agreements signed with the EU and the activities of joint bodies, established in line with these agreements, cooperation of state bodies with the institutions and bodies of EU, Member States, Candidate States and future candidate states over the Stabilisation and Association Process, the cooperation with the Parliamentary bodies, and the cooperation with the Mission of Montenegro to the EU in Brussels.
- EU units are established in each ministry and are responsible for governance and co-ordination of tasks related to the European integration in specific ministries and public administration bodies in general.

Despite these efforts, the administrative capacity involved in co-ordination of European integration, including financial assistance, remains weak and needs to be substantially strengthened.

Establishment of the Decentralised Implementation System for EU funds (DIS) is mid-term priority of Montenegrin Government according to National Programme for Integration (NPI). NPI stresses the importance of the establishment and further development of transparent procedures and accountable DIS structures. It was envisaged that the National Fund (NF) and the Sector for Finance and Contracting of the EU Assistance Funds (CFCU) recruit sufficient staff, ensure adequate training and formalise division of responsibilities and accountabilities by relevant operational agreements and governmental decisions. The process of preparing Montenegro for decentralised management with EU assistance was launched in the second half of 2008, with the signature of the contract of the TA project "*First steps for a decentralised implementation system in Montenegro*". The primary objective of the project was strengthening of the administrative and managerial capacities of the DIS key stakeholders and structures, and the fulfilment of the accreditation criteria as laid down in Annex I to the IPA Implementing Regulation (IR). The institutional and legislative framework for decentralised management and control has been established.

A Sector for programming, monitoring and evaluation in the Ministry of European Integration was formally established by the adoption of an amended "Rulebook on Internal Organisation and Systematisation of the Ministry of European Integration" on 9 September 2009 as a separate sector headed by the Deputy Minister. The NIPAC Office, i.e. the Ministry of European Integration, is in charge of establishing and managing a national monitoring system within the IPA, in the Decentralised system of Montenegro. Monitoring is performed through the activities of different committees. The Monitoring Committees are as follows:

- IPA Monitoring Committee - covering the overall IPA;
- Sectoral Monitoring Committee – covering the components level.

Regarding the strategic planning framework for IPA financing, in 2010 there were about 90 strategic documents in different sectors. The office of the Prime Minister is in charge of the harmonisation of the new strategies with existing laws and regulations and key policy documents. Once a strategy is adopted, however, very often it is not clear who is in charge of its implementation. Usually these are line Ministries or relevant Government Agencies. The Government of Montenegro has adopted sectoral strategies, making them official sector intervention policies. However, in most cases the adopted strategies are not accompanied by action plans and budget allocations. The strategic documents often cover so much ground that most projects will fit under them.

1.1 Rule of Law Situation

The independence of Montenegro in 2006 has set in motion substantial reforms in all governmental institutions. Ministries intend to develop more efficient and transparent systems, including for policy making, organisational and financial management. These reforms specifically include the Ministry of Justice. The Ministry of Justice is *de jure* the legal advisor of the government and the key administrative body for strengthening the rule of law in Montenegro. The Ministry is responsible, among others, for the courts, the state prosecutors, the prisons, probation, criminal law and sentencing. In the international arena, the Ministry is responsible for international legal cooperation and assistance and also takes part in efforts to lay the groundwork for integration into the European Union. Reforms in the justice sector as the starting point for a broader set of democratic reforms are critical and the Ministry of Justice acts as the key change agent in bringing about the intended sector reforms. MOJ was the driving force behind the preparation and adoption of the Strategy for the Reform of the Judiciary (see below) – a roadmap for the advancement of the Montenegrin judiciary. As of December 2007, the Ministry has been tasked with implementing the comprehensive Action Plan for Judicial Reform, created on the basis of the Strategy.

Montenegro has faced the two biggest challenges to young democracies: weak governance, and prevalence of corruption that penetrates all spheres of the society. In this context, the justice system gains importance as the most important mechanism for the fight against corruption. Given that significant changes in strategies, policies and legislation have been made or are currently underway, the biggest challenge now lies in a non-political and rigorous enforcement of laws in a country marked by a small population with an abundance of close relations to high-ranking officials who are sometimes included in corruption scandals.

Box I.1: National Rule-of-Law Strategies

Judicial Reform Strategy. A Judicial Reform Strategy (2007-2012) was adopted by the Montenegrin Government in June 2007. The Strategy defines main objectives of the further judicial reforms for the following five-year period. Key objectives of the reforms are: strengthening of independence, efficiency and availability of judiciary, and the increase of the public confidence in the judiciary. The Action Plan for implementation of the Judicial Reform Strategy (2007-2012) indicates following objectives: Independence and autonomy of the judiciary system, strengthening of public confidence in the judiciary system, staff education in judiciary organisations, strengthening of international and regional cooperation, alternative dispute resolution, fight against corruption, terrorism and organised crime, strengthening of human capacities, the penitentiary system, and launch and use of the judiciary information system PRIS. The plan highlights the need to combat corruption at national and local level and through an inter-agency cooperation between judicial bodies and other institutions. The Action Plan stipulates also the need to foster the participation of CSOs.

Anti-corruption Strategy. The Government of Montenegro passed the Programme of the Fight against Corruption and Organised Crime (August 2005) and the Action Plan for Implementation of the Programme of the Fight against Corruption and Organised Crime and it formed a body to monitor implementation of the Action Plan in February 2007 – the *National Committee for Implementation of the Action Plan for Implementation of the Programme of the Fight against Corruption and Organised Crime* - which includes high-ranking representatives of the legislative, executive and judicial powers, as well as representatives of the non-government sector. The corresponding Action Plan is a mid-term document projected for the period of three years. It constitutes specific measures and activities, responsible bodies and institutions, deadlines, success indicators and risk factors. Representatives of the non-government sector were involved in development of both the Programme and the Action Plan for its implementation. In July 2011, Government adopted a revised 2011-2012 Action Plan for the implementation of the Strategy for fighting corruption and organised crime, comprising a number of new measures and improved indicators. The National Commission responsible for monitoring the implementation of the Action Plan adopted its first report in April 2011. In the meantime a new Anti-Corruption Strategy for the period 2010-2014 has been passed, along with an Action Plan for the period 2010-2012. A more detailed analysis on the Anti-Corruption Strategy and Action Plan is provided in Box 5.1.

Anti-OC Action Plan. An Action Plan for combating organised crime was adopted in January 2012 which introduces operational measures and indicators in line with the priorities identified in the 2011 organised crime threat assessment (OCTA).

1.2 Country Programming and Country Programmes 2007-2011

The general structure for the programming of the IPA funds over the period 2007-2011 is shown in figure 2.1 in the main report. The European Partnership provides the strategic and programmatic foundations first for the SAp and later the signed SAA that are to ensure that Montenegro is able to meet the accession criteria, generally referred to as the “Copenhagen criteria” of political requirements, socio-economic requirements, and European standards (*acquis*).

As of 2007, as noted above, EC financial assistance was provided in the form of IPA funds. Based on the policy documents, a regional three-year Multi-annual Indicative Financial Frameworks (MIFFs) provided the strategic and financial framework for the coming three years. Based on the MIFF, country-based Multi-Annual Indicative Planning Documents (MIPDs) were prepared for the current and the following two years. From the MIPDs, annual National Programs of specific projects were then agreed to.

A key consideration with the introduction of IPA funds was to strengthen national ownership and gradually move towards the Decentralised Implementation System for IPA funds. The strengthening

of the SEI was a key step in this process, as was the introduction of Senior Programme Officers (SPOs) in the ministries with particular responsibility for the IPA funds.

Focus in the programming of the IPA funds has been on the first component of Transition Assistance and Institution Building (TAIB), and that is what is largely looked at below. The first MIPD was for the period 2007-2009. The objectives for rule of law involved strengthening the legal and constitutional framework in the areas of rule of law in particular implementation capabilities, and efficiency of the law enforcement institutions; strengthening the judicial system including the Judicial Council, implementing governmental strategy and action plan to fight corruption at national and local levels, with due consideration to prevention of corruption, capacity building and improved co-ordination among law enforcement bodies and other entities, and to the involvement of civil society organisations and supporting police reform and the fight against terrorism, illicit drug trafficking, smuggling, organised crime, money laundering, trafficking of human beings.

These objectives remained by and large unchanged in the MIPDs for the subsequent periods 2008-2010 and 2009-2011. In the MIPD 2011-2013, the structure is changed towards a sector grouping of objectives within a sector entitled “Justice Sector Reform and Law Enforcement”, with the following key objectives:

- Enhancing training, including training with set curricula for all members of the judiciary; systematic training on new legislation for all judges; enhanced training for prosecutors on implementation of the new CPC; systematic training, in particular on new legislation and EU law, for all judges and prosecutors.
- Development of a pro-active approach for the prosecution service and the undertaking of ex officio investigations
- Cooperation with judicial and prosecutorial services of neighbouring countries, based on harmonisation of legislation, including on extradition (also of own nationals) is to be developed.
- Improve the administrative capacity of the judiciary; the finalisation of the implementation of the already adopted IT-based court case management system and the need to upgrade the skills of judges.
- Investments in equipment and courtrooms and other infrastructure; and implementing the measures foreseen to improve the penitentiary system, could need support.

While there are a number of indicators provided for measuring progress against those objectives, there are no criteria for allocating resources across different objectives, nor any performance or success criteria for measuring results from the funding against.

The national programmes that are derived from the MIPDs and the national consultations provide the project initiatives that are to be funded over that year’s IPA allocation. Those that are of interest for this review concern the three key areas that have been defined for this task, namely judicial reform, fight against corruption and fight against organised crime. The MIFFs/MIPDs do not have the fight against organised crime as a specific field, so the project initiatives are listed under the first two headings only in table 2.1 below.

According to the project fiches, there were therefore a total of 12 projects in the field of rule-of-law, with total budgets of about € 10.35 million, while the two anti-corruption and anti-organised crime

projects received allocations of € 1.9 million. Out of a total of about € 236 million earmarked for IPA projects in Montenegro in the period 2007-2013, hence around € 12 million have been dedicated to assistance in the area of rule-of-law.

Table I.1: Relevant Rule of Law Projects in the National Programmes 2007-2011

National Programme	Judicial Reform projects	Ant-corruption projects
2007	Justice Reform (Twinning) Total budget: € 1.5 million	Fight against organised crime and corruption Total budget: € 1.2 million
2008	Supporting migration management Total budgets: € 1.0 million	n/a
2009	Support for the implementation of the new Criminal Procedure Code Justice System Monitoring Project Strengthening the capacity of Police Administration Implementation of the Personal Data Protection Strategy Support to the Reception Centre for Asylum Seekers Total budget: € 4.35 million.	n/a
2010	Intelligence-Led Policing Total budget: € 250,000	Support the implementation of the anti-corruption strategy Fight against drugs Total budget: € 850,000
2011 (1)	Support the establishment of alternative sanctions Support the implementation of the Juvenile Justice Code Total budget: € 1.2 million	n.a.
2012	EU Support to the Rule of Law (EU ROL) Total budget: € 3 million	n.a.

(1): The National Programme for 2011 does not break down allocations by projects as the previous ones do, as it has moved towards sector programming and thus only provides a general allocation.

1.3 Findings and Conclusions

On the **overall programming**:

- Programming of IPA funds is driven by an overarching body of policy and agreements, as reflected in the European Partnership/SAP/SAA.
- The MIFFs and MIPDs as three-year rolling programmes that are revised annually provide a strategic and financial framework for annual IPA allocations. They are updated with inputs from the EC's annual Progress Reports and any Strategy Papers local authorities produce. The two instruments take a lot of time, however, and are both at a very generic level with no real priorities or performance indicators driving allocations.
- The MIPD has changed in that the MIPD 2007-2009 used the three Copenhagen criteria, while the MIPD 2011-2013 used a sector strategic planning framework. While the accession criteria are the same, changes to the way funding is conceived and allocated makes longer-term

programming problematic, though the move to a sector strategic planning approach based on a wide national consultation process in principle is positive.

- The MIPDs do not have clear performance criteria in terms of what the programme should focus on for what reasons (resource allocation criteria) or in terms of what are desired or expected achievements (results criteria, target values).
- While MIPDs provide a three-year funding horizon, the National Programmes (NPs) only allocate financing for one year. Three themes run through Table 2.1: capacity building and training for judiciary sector staff; infrastructural support for the courts system (equipment for the Prosecutor's Offices and Special Prosecutor's Office, and for Courts), and support to various aspects of anti-corruption efforts. The inter-linkages within and between these are not easy to discern, however, for example if infrastructure improvements are being linked to capacity development.
- Links between MIPDs and NPs are clear: all projects selected are within MIPD objectives. The actual prioritisations in the NPs are not obvious, though, as there is no justification for the choice of projects and their particular focus as against possible alternatives.

Regarding "**lessons learned**" for future programming, all MIPD documents for Montenegro reiterate the same sets of "lessons learned":

- The need to better target project objectives
- Improve the planning of operations
- Increase the awareness on sustainability
- Conduct functional needs assessments
- Improve donor co-ordination
- Improve project design and project preparation
- Involve civil society in the programming steps, not only for social matters
- Increase the monitoring of project implementation
- Ensure that cross-cutting aspects lead to concrete impact
- Ensure ownership by the beneficiaries and sufficient absorption capacity

The short cycles of IPA projects, although referred to by informants as a major challenge for assistance in the rule-of-law area, is not listed as a lesson learned. While the early MIPDs do not explain how these lessons will be integrated into the programming process, the MIPD for the period 2011-2013 is more explicit by stating that:

- Projects are mature and well designed;
- Staffing in the relevant institutions is adequate
- Mobilise civil society and a political consensus on its role and on key reform activities
- There is an efficient donor co-ordination system, based on strategic reform priorities and in particular on its drive towards European integration
- The Montenegrin administration should be encouraged to develop a greater inter-sector awareness and cooperation relating to the use of EU co-funding
- Programming long-term change like judicial reform requires predictable, stable planning parameters and financing, so programming instruments and cycles need to support this.
- Programming in a contentious field like judicial reform should be based on an inclusive programming process to ensure the broadest ownership and agreement possible, and this requires time.
- National parameters for such longer-term programming should be in place: public financing, legal/regulatory frameworks, and institutional structure. To the extent any of these are missing, they should be among the top issues on the reform agenda.
- The introduction of a National Development Plan (NDP), currently supported with IPA assistance, will be critical for the design and streamlining of national strategies (including in the area of rule-of-law) and hence be an important element for improving future programming.
- The **Intervention logic/relevance** of the activities funded are in line with the overarching concerns expressed in the EC programming documents, builds on the fundamental reforms carried out during the CARDS period and is therefore rated **Satisfactory**.
- **Efficiency** of assistance in the rule-of-law area is rated **Satisfactory**. The low proportion of rule-of-law assistance against support of initiatives along economic criteria indicates substantial constraints in absorption capacity regarding political criteria.

2. Judicial Reform

The judicial system in Montenegro is organised as a three-instance court system. It consists of 15 basic courts, two High Courts, an Appellate Court and a Supreme Court. It also includes two Commercial Courts and an Administrative Court. Judicial power is exercised by 262 judges supported by 49 bailiffs and 1084 administrative staff.

All parliament decisions on appointments in the judiciary are taken by simple majority. The Constitutional Court consists of seven judges who are elected by parliament for a period of nine years. It decides on the conformity of laws with the Constitution and with ratified international agreements and on whether the President has violated the Constitution.

The Judicial Council is the body administering the judiciary. It has a President and nine members. The President of the Supreme Court is the President of the Council. The Minister of Justice is also a member. The Judicial Council is the body responsible for selection, appointment, promotion, dismissal and disciplinary measures concerning judges.

The public prosecution broadly follows the structure of the court system. Each Public Prosecution Office is headed by a public prosecutor assisted by one or more deputy prosecutors. A Special Prosecution Office for fighting organised crime, corruption, financing of terrorism and war crimes has been established within the Supreme Public Prosecutor's Office. There are a total of 109 prosecutors, of whom 17 are public prosecutors and 92 deputy public prosecutors. Public prosecutors, including the Supreme Public Prosecutor, are appointed by parliament.

The Prosecutorial Council is appointed by parliament on a proposal by the Supreme Public Prosecutor's Office. It has a President and ten members. The Supreme Public Prosecutor is President of the Prosecutorial Council. The Council is responsible for appointment, promotion, dismissal and disciplinary measures concerning deputy prosecutors.

A Judicial Training Centre provides both initial and continuous training for judges and prosecutors. Shortcomings remain, however, with regard to the training of judges and prosecutors. There are no permanent mandatory courses and the Centre depends on scarce financing from the central budget and international donors. The training provided on implementation of the new Criminal Procedure Code (CPC) remains insufficient, in particular for judges, and is to be enhanced following the full entry into force of the CPC. The independence and the administrative and financial capacity of the Judicial Training Centre need to be strengthened and initial training with set curricula for all members of the judiciary introduced.

Despite improvements in recent years in the legislative framework for the appointment of judges and prosecutors still does not provide sufficiently for the independence of the judiciary. The merit-based elements of the career system need to be substantially strengthened and a country-wide single recruitment system remains to be established. A procedure for amending the Constitution in order to further enhance judicial independence through a de-politicised and merit-based system of appointments of members of the Judicial and Prosecutorial Councils and of State prosecutors is ongoing. Concerning the impartiality of judges, rules on conflict of interest and a code of conduct are in place. Random, automated allocation of court cases is ensured in courts with the aid of an IT system, except in smaller courts with few staff.

Corruption and conflict of interest rules are still insufficiently monitored in the judiciary. Procedures for removing professional immunity need to be strengthened to ensure that judges and prosecutors are fully accountable under criminal law. Efforts have been made by the authorities to remedy shortfalls in the judiciary's infrastructure and equipment, but they continue to hinder efficiency. The deadlines for a number of measures in the action plan for implementation of the judicial reform strategy (2007-2012) have been revised. Initial steps have been taken to rationalise the court network, but Montenegro remains one of the countries with the highest number of basic courts, judges, prosecutors and administrative staff per capita in Europe.

The final conclusion in the 2012 Progress Report is that *“Montenegro has made some progress in the area of the judiciary and fundamental rights. Implementation of recently adopted legislation has started. Progress has been made with regard to the publication of court rulings and the backlog of court cases. The constitutional reform aimed at strengthening judicial independence has not been completed yet. A single, country-wide recruitment system and a system to monitor the length of trials need to be set up, the court network rationalised and the reliability of judicial statistics*

improved. Further efforts are needed to ensure merit based appointments and career development, as well as to strengthen accountability and integrity safeguards within the judiciary".

2.1 Assistance Provided

Table I.2 presents the projects funded from IPA 2007 to 2011 directly related to judicial reform:

Table I.2: IPA projects addressing judicial reform

IPA	Project title	EC €	Description
2007	Justice Reform (Twinning)	2,000,000	Effective implementation of the Montenegrin judicial reform and juvenile justice system reform: (i) overall judicial reform and (ii) juvenile justice system reform.
2009	Implementation of new Criminal Procedure Code, CPC	1,000,000	Increase effectiveness of fight against corruption, organised crime and protection of human rights with implementation of new CPC in line with European standards.
2011	Strengthening justice reform	1,200,000	Strengthening justice reform through implementation of system of execution of criminal sanctions and the new juvenile justice legislation.

The project fiches contain log-frames for all the projects, with the outputs and even indicators largely at a level where it would be possible to monitor progress. The longer-term outcomes are consistent and logically linked with the overarching sector policies and MIPDs.

2.2 Results Achieved

Ongoing IPA projects have been monitored through Results Oriented Monitoring (ROM). The ROM is based on regular on-site assessments by independent experts of ongoing projects and programmes which are appraised – using a highly structured and consistent methodology – against the criteria of relevance, efficiency, effectiveness, potential impacts and likely sustainability.

The ROM reports are the only external performance reporting provided, and does not add much insight in terms of real performance regarding judicial reforms. Furthermore, while some of the ROM monitoring has looked at core activities that the EC has supported over time, the monitoring is based on fairly short-term visits while the (short-term) projects are running so that it becomes difficult to identify longer-term results and seeing the projects in light of systemic change.

The extent to which ROM reports respond to the monitoring dimensions (relevance, efficiency, effectiveness, impact, sustainability), and the specific questions listed in the “background conclusion sheet” varies considerably. Some ROM reports completely miss the specific questions that are meant to operationalize the monitoring dimensions and “prime issues” sections. ROM monitors should be held accountable to responding to the monitoring questions.

The fact that none of the projects monitored in the judicial reform area achieves an “A” (Very Good) in any of the monitoring dimensions in any given year indicates that expectations toward the projects are unrealistically high. Some ROM reports highlight the lack of quantifiable indicators, which may lead to the fact that monitors choose median ratings. On a larger scale, the intended sector approach under IPA II will require designing robust indicators for the rule-of-law areas along which to measure sector performance.

Table I.3: ROM reports on judicial reform-relevant projects

Project title	Date	RQD	EID	ED	ID	PS
Support to the Prosecutors Network	2008-09	B	B	B	B	B
Support to the Prosecutors Network	2009-07	B	C	B	C	C
Support to the Prosecutors Network	2010-09	B	B	B	B	C
Monitoring Instruments for Judicial and law Enforcement Institutions in Western Balkans	2010-04	B	B	B	B	B
Establishment of International Law Enforcement Co-ordination Units (ILECUs)	2009-05	B	B	B	B	C
Establishment of International Law Enforcement Co-ordination Units (ILECUs)	2010-05	C	C	C	B	B
Justice Reform	2009-06	C	B	C	B	B
Justice Reform	2010-03	B	B	B	B	B

Ratings categories: "RQD": relevance and quality of design; "EID": efficiency of implementation to date; "ED": effectiveness to date; "ID": impact to date; "PS": potential sustainability. **NOTE:** Some ROM reports that took place between the ones listed – some projects were monitored every six months – have not been included.

The main results of EU assistance to judicial reforms in Montenegro lie in the (i) improvement of regional cooperation (in the area of prosecution through the Prosecutors Network project and more generally in judicial co-operation through the Justice Reform Project), (ii) strengthening the normative framework required to ensure the independence of the judiciary, and (iii) enhancing the efficiency of the judiciary. Results have also been achieved in strengthening of legislation for fighting crime. Overall these results are in line with the MIPDs. Findings of the progress reports confirm significant advancement along the three objectives.

With regard to the "Support to the Prosecutors Network" project, sustainability ratings dropped mainly as result of a lack of financial sources to sustain the network other than project funds. Even by the end of the project, an exit strategy for donor funding was not available. Similar problems apply also to the ILECU project. Sustainability also seems to be at risk in some projects (e.g. ILECU) as a result of weak capacity among beneficiary organisations and the lack of involvement of stakeholders in project design.

Weak sector and donor co-ordination in the area of judicial reforms has been pointed out as a problem both in the ROM reports and by interviewees in the field. In view of the intended introduction of a sector based approach, this issue will require further attention. The project "Establishment of International Law Enforcement Co-ordination Units (ILECUs)" has helped in improving domestic co-ordination in the area of law enforcement.

2.3 Findings and Conclusions

The main findings relate to the level of ambition of projects, the importance of upgrading results monitoring and reporting, and the strengthening of inter-institutional cooperation:

- The fact that none of the judicial reform project in Montenegro achieves a very good rating across any of the monitoring dimensions underlines the need expressed in the MIPDs to sharpen the formulation of project results (objective, purpose, outputs) and activities, so that expectations toward project performance become more realistic.
- The ROM reporting appears too ad hoc and narrowly focused to provide much assistance to corrective action in the larger field of judicial reform, yet is the best external real-time monitoring of activities in the sector. Most of the ROM reports do not respond to the detailed monitoring questions that are part of the methodology. The improvement of statistics in the area of judiciary is a necessary requirement to facilitate more effective monitoring. In view of the anticipated sector approach, the quality of monitoring, evaluation and reporting on results will need to be substantially improved.
- Strengthening information sharing, co-ordination and joint action among the players in judicial reforms at national and regional levels have been recognised early on as a prime target of IPA assistance. In order to ensure that successes that are triggered with the help of external assistance will last and be integrated into standard procedures, the future availability of sufficient funding for activities through predictable sector budgets will be critical. Since budget systems are weak and so is inter-agency co-ordination, the budgeting of sector strategies is a major systemic change which requires substantial attention and innovative change management processes – over and above through the establishment and nurturing of an effective sector co-ordination framework.
- **Impact and Sustainability** are dimensions for which there are hardly any results reporting. Where conclusions on those dimensions are made, these are mainly deductive (e.g. „since local stakeholders are not included in project design, sustainability is low“) or anecdotal („the beneficiaries appreciate the support from the project“), rather than fact based. Judging by the EU Progress Reports there has been significant and continuous progress in judicial reforms over the years – which would justify rating both dimensions as satisfactory – but the possibility of a clearer attribution of such progress to EU assistance through improved results reporting would be desirable.

3. Fight Against Organised Crime

In addition to the judicial organisations as described in the previous chapter, the fight against organised crime in Montenegro involves a range of stakeholders. The overall political responsibility for policing lies with the Minister of Interior. An autonomous Police Directorate has been created as the main law enforcement agency under the overall auspices of the Ministry. In the Criminal Investigation Police Directorate, the reorganisation of the department for fighting organised crime is well under way with new units being established in order to concentrate on specific areas of organised crime.

Professional and specialised training for police and other law enforcement agencies staff is organised by the National Police Academy located in Danilovgrad. The institution was created in

March 2006 as a public institution and a legal entity, by transforming the Police School already existing staffed with 65 people. Apart from the police and prosecution service, the other law enforcement agency in this field is the Administration for the Prevention of Money Laundering and Terrorist Financing (APLMFT - equivalent of a Financial Investigation Unit). The Law on Prevention of Money Laundering, adopted in 2003, established the APLMFT with 19 staff. It has administrative powers but no investigative powers. It can suspend suspicious transactions for up to 72 hours, prepare a report, and take other similar measures following a court application by a prosecutor.

Particular shortcomings noted during the field work include the scope and quality of anti-organised crime legislation (including AML laws and regulations), poorly equipped institutions, the lack of use of informants and absence of a budget for international investigations, insufficient co-ordination among agencies and the inadequate knowledge capacity of prosecution services to pursue complex cases.

The 2012 Progress Report confirms these observations: "*Regional and international cooperation was reinforced through the signature of agreements and joint operations. Still, the results achieved, including the administrative capacities and interagency cooperation in the field of organised crime have to be pro-actively consolidated, particularly in the field of financial investigations, while the legal framework needs to be completed. A national criminal intelligence system still remains to be established. Its lack hampers the effectiveness of the law enforcement bodies, which has to be enhanced. Prosecutor's leading role in investigations still needs to be strengthened. Increased efforts are required in the fight against money laundering and trafficking in human beings, including identifying and reintegrating victims.*"

Preparations in the area of anti-money laundering are progressing slowly. In the fight against trafficking in human beings, Montenegro is moderately advanced. Drug trafficking remains a major concern, as Montenegro is one of the main Balkan routes for drug trafficking to and from the EU. The amount of seizures remains very low. The legal framework and administrative capacities have to be strengthened. A focal point for cooperation with the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) has been appointed but is not yet operational, due to the limited financial and human resources.

Provisions of the CPC and the Criminal Code on extended confiscation of criminal assets have not yet been used. There is little progress can be reported regarding the work of the State agency responsible for the confiscation of criminal assets. The overall number of financial investigations and seized assets remains low, due to the very weak administrative capacity in this field. The capacity of prosecutors and police to conduct financial investigations, trace criminal assets and present related evidence before the courts remains to be improved. Inter-institutional cooperation needs to be improved, in order to ensure smooth and timely enforcement of court decisions on seizure or confiscation of criminal assets.

The level of inter-agency cooperation and information exchange between the different law enforcement agencies and the prosecutor's office needs further strengthening. Cooperation and co-ordination between police and prosecutors in particular need to be improved. The capacity of prosecutors and police to conduct financial investigations, trace criminal assets and present related evidence before the courts needs to be improved. Montenegro needs to improve the possibility to work on the basis of intelligence, notably through making access to information easier for

investigators from other and between different branches of the same service. The specialised units dealing with organised crime within the police, and the inter-agency teams already established, need to get appropriate resources and support from their mother agencies. Internal monitoring and verifications mechanisms in relation to the fight against organised crime need to be reinforced.

3.1 Assistance Provided

Assistance provided through CARDS and IPA has focused on strengthening the overall judicial system (e.g. through supporting the introduction of a new Criminal Procedure Code), and more particularly on enhancing international cooperation of prosecution services, and information sharing, co-ordination and joint action among domestic agencies. IPA assistance focused mainly on the introduction of “intelligence-led policing” and on reinforcing the interaction between the various law enforcement agencies in the field of organised crime and corruption.

Nominally, two IPA projects have assisted the fight against organised crime in Montenegro. The project “Support to implementation of the new Criminal Procedure Code (CPC)” is cited here because its overall objective includes a more effective fight against organised crime. In fact, however, only one sub-activity (Analysis and recommendations for strengthening Special Prosecutor’s Office for fight against organised crime, corruption and terrorism) directly addresses, among other areas, organised crime. This makes a clear attribution of achievements toward the overall objective to project activities difficult.

EU assistance has been provided in the area of anti-money laundering (AML) through the IPA 2007 project on Organised Crime and Corruption. In addition there has been a twinning project in support of the Central Bank in support of AML, financed from IPA 2008. Two new projects in this area currently in preparation. A first project of about 250.000 Euro will finance 200 days of international expertise (light twinning) to (i) make recommendations to improve management of the Administration for the Prevention of Money laundering and Financing of Terrorism, (ii) define needs in terms of IT systems (currently all transactions are made on paper), (iii) make recommendations in terms of regulation improvements and (iv) organise a workshop. A second project will improve co-operation with Serbia in the area of AML. These needs were reconfirmed in interviews.

Table I.4: IPA projects addressing organised crime

NP	Project title	EC	Description
2007	Fight against organised crime and corruption	1,200,000	Strengthening the Criminal Police Directorate and Directorate for Anticorruption Initiative. Upgrading Police Academy facilities and ensuring appropriate equipment for the organised crime department
2008	Regulatory and Supervisory Capacity of Financial Regulators	1,200,000	Improving institutional and regulatory capacities of financial sector regulators to supervise financial market and institutions in line with EU acquis. One project component related to the prevention of money laundering and other forms of financial crime.
2009	Support to implementation of new Criminal Procedure Code	1,000,000	Increase effectiveness in the fight against corruption, organised crime and protection of human rights through strengthening the capacity of the law enforcement bodies.
2010	Strengthening border control,	1.800.000	The project aims to improve the safety and security of the citizens of Montenegro in accordance with EU standards, by

	criminal intelligence and fight against drugs		strengthening the administrative, technical and infrastructure capacities of the Police Directorate of Montenegro in the area of integrated border management, criminal intelligence and the fight against drugs.
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3.2 Results Achieved

IPA assistance in the area of organised crime has been limited to one project entitled “Fight against organised crime and corruption”. In terms of results reporting, as shown in table I.5, ROM reports exist on this project, and on the CARDS project “Support to the Prosecutors Network”, which aimed at strengthening regional cooperation of prosecutors.

Table I.5: ROM reports on organised crime-relevant projects

Project title	Date	RQD	EID	ED	ID	PS
Support to the Prosecutors Network	2008-09	B	B	B	B	B
Support to the Prosecutors Network	2009-07	B	C	B	C	C
Support to the Prosecutors Network	2010-09	B	B	B	B	C
Fight Against Crime and Corruption	2009-06	A	B	B	B	B
Fight Against Crime and Corruption	2010-04	A	A	B	B	B
Fight Against Crime and Corruption	2011-04	A	B	B	B	B

Ratings categories: “RQD”: relevance and quality of design; “EID”: efficiency of implementation to date; “ED”: effectiveness to date; “ID”: impact to date; “PS”: potential sustainability. **NOTE:** Some ROM reports that took place between the ones listed – some projects were monitored every six months – have not been included.

The judiciary is not a direct beneficiary of IPA support dedicated to the fight against organised crime consequently. This may be inadequate. Some informants in the field have opined that the capacity of the police to arrest organised crime suspects is ahead of the judiciary’s capacity to prosecute those suspects. These arguments might make it necessary to review the balance of beneficiaries in anti-organised crime projects. The project “Fight Against Crime and Corruption” entails results as shown in the table below.

Table I.6: Result of the project “Fight Against Crime and Corruption”

Result
<ul style="list-style-type: none"> • Improved and more efficient functioning of the Criminal Police Directorate • Higher rates of crime detection and quicker response rates to events • High level of EU compliancy in all aspects of work of the Criminal Police Directorate
<ul style="list-style-type: none"> • Improved functioning of the Administration for the prevention of money laundering in collecting, analysing, processing and disclosing of information about suspicions of money laundering • Quicker response rates to suspicious transactions • Increased supervision of the under reporting sectors • Improved cooperation with foreign financial intelligence units
<ul style="list-style-type: none"> • DACI’s improved co-ordination of legislative improvement in the area of economic crime • Increased public awareness about corruption amongst target groups and general public
<ul style="list-style-type: none"> • Increased space for training in the Police Academy • Higher quality of data gathered

While the existing reporting on achievement of these results is positive (except for the provision of increased space for the Police Academy), actual achievement is not evidenced. For the purpose of future programming and in particular an effective introduction of the sector based approach, results reporting will need to be more disaggregate and fact based. It should be difficult to programme or release more funds in the absence of more rigorous results reporting. There is also a risk of circular reasoning when the ROM report gives the Commission’s Opinion on Montenegro’s membership application as evidence of project impact.

There are some discrepancies between the assessment of project effectiveness in ROM reports and observations of informants interviewed during the field mission. While ROM reports (e.g. on the project “Fight Against Crime and Corruption”) are quick to say that “target groups have been properly and successfully trained”, handing out a straight “A” (Very Good) for Effectiveness, training quality has been one of the most criticised aspects during the field work. More specifically, the co-ordination of training, the level of knowledge imparted by trainers, and the relevance of trainings are considered to be frequently inadequate. These discrepancies call for more investment into the monitoring of short, medium and long-term training results.

The regional cooperation between prosecutors, which is particularly important in the Western Balkans for an effective fight against serious and organised crime, has improved as a result of CARDS assistance – although opinions seem to vary on the extent to which the number of cases investigated and prosecuted in Montenegro as a result of this has actually increased. The EU assistance confirmed that where externally funded projects involve the establishment or initial support of new or relatively novel organisational frameworks, questions of sustainability should be addressed before funds are committed. Where medium-term expenditure frameworks and budget programming systems do not exist, such as in Montenegro and other countries in the region, the effectiveness and long-term sustainability of donor assistance will always be difficult to assure.

3.3 Findings and Conclusions

The fight against organised crime and its various sub-components – money laundering, drug trafficking, trafficking in human beings – is seen as important and constituting a serious challenge in terms of cross-border criminality for Montenegro. IPA funding has not focused much on this issue directly. The issue is rather addressed as part of the larger challenge of strengthening the investigative, prosecutorial and sentencing capabilities of the various parts of Montenegro's law enforcement system – and even more to ensure coherence, collaboration and consistency across the various jurisdictions when it comes to organised crime.

- The main challenge for improving performance in this area is not weak technical skills and limited resources, but the lack of cooperation between and among different bodies across jurisdictions, and behind that the lack of a clear interest by the various political leaderships in taking on this issue.
- Informants in the police maintain that while the police are able to arrest suspects of organised crime, the justice system is often not able to prosecute them. According to the informants, more support should therefore be given to strengthening the judiciary. Such support should be priority for EU assistance.
- The quality of experts used in police reform projects is generally rated as a critical factor for the success of a project. There is no uniform opinion, though, on the quality of experts provided in EU funded initiatives. While some rate the quality very high, others report a lack of motivation and inappropriate attitudes and skills. This fact points at the need for more careful selection processes of experts. The need for a more rigorous selection seems to apply more for projects where knowledge transfer constitutes an important part of the project purpose. Police reform projects are therefore currently viewed as more successful where they focus on infrastructure development. A main criticism of poor training is that it is more a representation of practice in EU Members States and not responding to the needs and circumstances of Montenegro.
- Given the large number of agencies that need to share information, build on each other's results and work jointly on fighting organised crime, and in view of the intended sector based approach, the establishment of a co-ordination council for the justice and home affairs would greatly help the development of coherent sector policies and consequently the future IPA programming process.
- Both the European Partnership and recent Progress Reports stressed the need to establish efficient institutional mechanisms for inter-agency cooperation in the area of the fight against organised crime and upgrade the capacity of the police department in the fight against organised crime. A sector approach would seem appropriate to facilitate such cooperation where activities do not target individual agencies but encompass activities which aim specifically at strengthening the information sharing, co-ordination and joint action among those agencies. The signature of a MoU between the Supreme State Prosecutor, the Police Directorate, the APMLTF, the tax administration and customs to form a joint investigative team is a positive example in this context.

- **Impact and Sustainability** in the fight against organised crime in the absence of hard data on many critical dimensions (e.g. capacity and sector co-ordination) should so far be seen as **moderately satisfactory**.

4. Fight Against Corruption

Corruption remains a serious concern in Montenegro. A National Commission has been established for monitoring the implementation of the Strategy on Anti-Corruption and Organised Crime (2010-2014) and its associated action plan (2010-2012).

A Directorate for Anti-Corruption Initiative (DACI) was established by Governmental Decree in 2001 and serves as a secretariat to the National Commission. DACI is in charge of (i) promotional and preventive activities aimed at effectively combating corruption, (ii) working towards adoption and implementation of European and international standards and instruments in the area of anti-corruption, (iii) and enhancing the transparency in business and financial operations. It has mainly a consultative role focusing on soft prevention measures such as education and awareness-raising. DACI's competencies would need to be strengthened in order for it to take a central role in the fight against corruption.

A Commission for Prevention of Conflict of Interest, elected by Parliament, has been established as an independent body. The Commission provides opinions and decisions regarding conflict of interest of public officials. Amendments have been introduced in the Conflict of Interest law to strengthen the competences of the Commission, which entered into force only in March 2012. Concern remains over the capacity of the Commission to perform its supervisory role adequately.

Montenegro has made efforts to further strengthen its anti-corruption legal framework, with a view to ensuring alignment with the relevant European and international standards. Steps have been taken to address the recommendations made in the third GRECO evaluation round covering the financing of political parties and incriminations. The provisions of the Criminal Code regulating criminal offences of active and passive bribery have been amended, with a view to ensure alignment with the Council of Europe's Criminal Law Convention on Corruption and its additional protocol.

Amendments to the Law on Political Party Financing were enacted in December 2011 and brought important legislative improvements in this area. A new Law on public procurement was enacted in July 2011, aimed at reducing opportunities for corruption and increasing transparency in this field. The new Law on civil servants and State employees provided legal protection for whistle blowers. Amendments to the Labour Law enacted by the parliament in November 2011 extended protection for whistle blowers to cover the private sector. Amendments to the Law on Free Access to Information were enacted by the parliament in July 2012, with a view to expanding the range of publicly available information and ensuring compliance with the Council of Europe Convention on Access to Official Documents and international standards in this field.

Despite improvements of the legal and institutional framework, evidence shows that implementation has not yet been able to produce sufficient results on the ground. Nonetheless, corruption remains widespread and continues to give serious cause for concern, allowing also for the infiltration of organized crime groups into the public and private sectors. The sanctioning system in the area of financing political parties remains insufficiently dissuasive and undifferentiated. Very few sanctions have been applied so far to political parties for breaching the rules on financing. The implementation of the political party financing rules needs to be improved and the pro-active approach of the

supervisory bodies ensured. A track record of combating corruption needs to be steadily built up, in particular in terms of investigations, prosecutions and convictions in high-level corruption cases. The number of final convictions remains low and there is still no corruption case in which seizure or confiscation of assets were ordered.

Overall, the Progress Report of 2012 notes that *“some progress has been made on fighting corruption. Implementation of recently adopted legislation in the key areas of political party financing, prevention of conflicts of interest and public procurement has started. The capacity of the supervisory institutions, in particular the State Election Commission, the State Audit Institution and the Commission for the Prevention of Conflict of Interest, needs to be enhanced. Montenegro has further developed its track record of investigations, prosecutions and convictions in corruption cases, but their number remains low and there are still no seizure or confiscation of assets ordered for corruption offences. Corruption remains widespread and continues to be a serious cause for concern, hindering law enforcement investigations of organised crime”*.

Box I.2: Montenegro’s Anti-corruption Strategy 2010-2014

The overall goal of the anti-corruption strategy is to create conditions for the prevention and sanctioning of corruption and organised crime at all levels through further development of institutional framework, efficient criminal prosecution and final adjudication, prevention, education, and a monitoring system in place for the implementation of the Strategy and its Action Plan. This goal is expected to be achieved with the following activities:

- Continue harmonisation of national legislation with international standards in the area of fight against corruption and organised crime;
- Rationalise administrative procedures and eliminate business barriers;
- Improve efficiency of work, strengthen integrity, accountability and transparency in the public sector and, in this regard, strengthen citizens’ trust in the public sector;
- Strengthen inter-institutional, inter-sectoral and international cooperation;
- Strengthen external and internal controls of the work of all branches of power, especially the control function of the Parliament of Montenegro;
- Set up an efficient and objective mechanism for monitoring the Strategy implementation;
- Improve efficiency in fighting corruption and organised crime by adequately implementing preventive and repressive action, particularly through forfeiture of proceeds of crime, and education;
- Raise public awareness of harmful effects of corruption and promote zero tolerance approach to corruption,
- Ensure participation of citizens, NGOs, media and private sector in fight against corruption and organised crime.

The strategy itself does not give any details on how much money the state has earmarked for any of those activities. The strategy also does not give any timelines as to when certain objectives will be achieved. The action plan defines 109 objectives to be achieved within the period 2010-2012, but again without allocating any resources to the achievement of those objectives. The strategy and its associated action plan are therefore without much value for sector programming, which requires sector policies that are linked to the budget and where the budget has at least some medium-term perspective. Policies that do not entail budgetary commitments most likely do not reflect real priorities but run the risk of being mere wish lists. Such “strategies” will make it difficult in future programming cycles for the European Commission to invest funds where the real commitment of government lies.

4.1 Assistance Provided

Table I.7 presents the IPA-funded projects 2007-2011 directly related to fighting corruption.

Table i.71: IPA projects addressing corruption:

IPA	Project title	EC €O	Description
2007	Fight against organised crime and corruption	1,200,000	Strengthening the Criminal Police Directorate and Directorate for Anticorruption Initiative. Upgrading Police Academy facilities and ensuring appropriate equipment for the organised crime department
2010	Implementation of anti-corruption strategy, action plan	700,000	Support implementation of anti-corruption strategy and action plan, focusing on the preventing measures, resulting in a reduced level of corruption and increased public trust in the institutions.

While in the IPA 2007 project DACI was only one out of five beneficiaries, it is one of two beneficiaries in the IPA 2010 project, along with the Commission for the Prevention of Conflict of Interests. More in particular, the intended results of the 2010 programme are (i) procedures and measures on integrity are prepared and enforced, (ii) Enhanced institutional and administrative capacity of the DACI and the Commission for the Prevention of the Conflict of Interest to coordinate anti-corruption preventive measures, including the enforcement of integrity measures in the public sector, (iii) anti-corruption co-ordination, prevention and monitoring measures/system established and fully operational, (iv) legal/regulatory framework on anti-corruption prepared, adopted and enforced, (v) Increased public awareness (in the public sector, private sector and among the citizens) on integrity, ethical principles and anti-corruption measures.

These results are so vague that they are relevant for any country at any given time. As explained in the above (Box I.2), the anti-corruption strategy and action plan do not prioritise certain results or activities over others. In such circumstances, it is practically impossible – given the lead time of EC procurement – to target assistance to specific needs. A sample activity in the project fiche is to “Develop and deliver a capacity building/training programme for staff from DACI and the Commission for the Prevention of the Conflict of Interest on relevant subjects, including preventive measures”. Similarly, this activity seems so unspecific that it can be implemented regardless of current and future developments and commitments made by national and international stakeholders in the meantime. The question is, however, whether the delivery of training will really be the best use of EU funding at the time it is made available. Without the beneficiary having much more developed prioritisation instruments, this seems hardly possible.

4.2 Results Achieved

ROM monitoring was only done on the project “Fight against organised crime and corruption”:

Table I.8: ROM reports on corruption-relevant projects

Project title	Date	RQD	EID	ED	ID	PS
Fight Against Crime and Corruption	2009-06	A	B	B	B	B
Fight Against Crime and Corruption	2010-04	A	A	B	B	B
Fight Against Crime and Corruption	2011-04	A	B	B	B	B

The two main results expected from the project “Fight Against Crime and Corruption” in the area of anti-corruption were (i) DACI’s improved co-ordination of legislative improvement in the area of economic crime and (ii) increased public awareness about corruption amongst target groups and general public. Interview confirmed that the expertise provided in the context of the project did provide important recommendation to reinforce the capacity of the DACI (including an action plan and recommendation to better structure the agency). The ROM reports confirm the strengthening of DACI’s legal advisory and public awareness functions as a result of EU support.

Lumping several rule-of-law agencies together in a single project or programme may be a cost-effective way of rendering assistance. Where there are no activities budgeted that facilitate the improvement of inter-agency cooperation, but activities target the capacity of individual institution only, it seems unlikely that projects would make a significant contribution to better cooperation – which after all is part of the project’s overall objective. Although recognised in the project fiches, neither of the two anti-corruption related projects has any explicit intervention designed to address inter-agency collaboration. Here, similarly to the other rule-of-law areas, a sector approach can be helpful insofar as it builds on a solid sector policies with predictable budgets for inter-agency activities and capacity building.

4.3 Findings and Conclusions

Given that corruption is consistently considered a serious problem in Montenegro, EU investment into addressing the issue has been very modest. From 236 million Euros foreseen for IPA (2007-2013), approximately one million Euros has been committed to fight corruption.

- Because corruption is so pervasive and touches on core interests of important parts of the political elite, any programming of serious anti-corruption work is going to have to be based on the mobilisation of a broad range of stakeholders who may have somewhat different interests in the issue. This will require time, resources and considerable political clout to succeed.
- Little can be said about the impact of EU assistance in the area of corruption. Montenegro’s corruption ratings have improved in recent years, although some informants believe that such improvements exist only on paper, but don’t reflect reality. It would seem rather improbable though to attribute these improvements to the relatively modest IPA support in this area. Results would need to be better monitored at the level of objective and project purpose. The formulation of objective and purpose along with the corresponding indicators dramatically improved in the IPA 2010 project fiche from IPA 2007, and would hence allow more rigorous project monitoring and evaluation.

- The sustainability of EU interventions can be rated satisfactory inasmuch as they helped to integrate increased skills and awareness into daily work routines or successfully initiated procedural and structural changes. Obstacles to the sustainable change of work habits in the rule-of-law organisations in Montenegro are on one hand the short project cycles and the reportedly high staff fluctuation. Extending project cycles and introducing innovative retention policy would be instrumental in increasing sustainability. Direct interventions into procedures and structures are risky where the consequences of such changes are not thoroughly thought through. If such interventions are chosen to ensure sustainability, then EU assistance must invest substantially more amounts of time and money into sectoral needs assessments and feasibility studies, to ensure that structural changes facilitate the desired long-term results.

5. Looking Ahead

When looking ahead regarding how EC resources for Rule of Law can be better programmed, the team has relied on various sources of information, as provided below.

5.1 Relevant Studies and Evaluations

There is one study that looks at the impact of EC support to governance and rule of law in Montenegro: “Evaluation of the CARDS Programmes, Country: Montenegro, Sectors: Public Administration Reform, Justice and Civil Society Development (COWI (2009), July 2009.”

The purpose of this retrospective evaluation of CARDS in Montenegro is to provide accountability for past assistance and lessons learned for decision making on improvement of pre-accession aid under IPA. This report encompasses three sectors: Justice, Public Administration Reform and Civil Society Development. The evaluation is based on a sample of 19 projects, among which were four projects targeting the judiciary: (i) Advisory Support to Prosecutors Training (2005), (ii) Technical Assistance (TA) to the Judicial Training Centre (2003), (iii) Support to the Judicial Training Centre Activities (2003) and (iv) Supply of IT Equipment to Courts in Montenegro (2003). The evaluation of these projects by and large confirms the main findings of the report:

- Project design has been made without in-depth institutional assessment and only limited national strategies. Limited links between CARDS and existing sectors strategies have contributed to lack of real needs identification.
- Some projects have had components with very different recipients and target areas contributing to making projects very complex.
- Contractors have overall been efficient and flexible in implementation, but in some instances they met a lack of ownership which delayed implementation.
- The limited resources to implement projects impacting efficiency may partly reflect that there have been many competing tasks following independence in 2006.
- Projects have overall met most of their project objectives. A few projects did not reach any or most of their objectives due to lack of ownership or missing commitment.
- Lack of staff and the instability of new ministries and institutions is a key obstacle to achieving full effectiveness and fully using and implementing the outputs. Intermittent participation in training has been a problem in some of the sectors reducing effectiveness of training.

- Some project results in public administration reform and justice will have impacts beyond the immediate institution and project environment. However, knowledge of these impacts are limited to the institutions involved
- Monitoring of overall and medium to long-term impacts only takes place in a very limited number of ministries. Due to lack of policy and more strategic functions, monitoring of policy impacts is limited.
- Lack of staff and budget allocations is a key impediment to sustainability of capacity building projects. Adding to this is the institutional instability which makes sustainability of project uncertain.
- Sustainability has only been directly addressed in a few projects as part of the reporting. Many projects do not address sustainability of outputs at any length or depth.

5.2 IPA Assistance: Lessons Learned

When reviewing the views of informants regarding how IPA funds could be programmed, these can be grouped into four categories: general framework conditions for programming in Montenegro, and then three dimensions of the activity cycle: the programming of the activities; the implementation; and how results are monitored, reported and used.

5.2.1 General Framework Conditions for Programming Rule of Law Assistance

State capture of judiciary a threat. Several informants confirmed attempts at political interference with the judiciary, to influence selection and appointment of judges, and limit the cases and possible punishment in cases that touch on political actors and organised crime perpetrators and their interests. To the extent that this is correct, it will undermine improvements in formal frameworks and laws and weaken the effects of the Rule of Law support by the EC.

- The intersections between politics and the legal system need to be transparent so that the fundamental concept of separation of powers is not violated. A need to strengthen merit based selection of staff in the judicial system is evident.

High tolerance for corruption. A number of informants noted what they believe is a high tolerance for corruption among the population for a number of reasons: its prevalence in the everyday lives of most people; the perception that top politicians are involved in corruption; most media not interested in covering corruption; few success cases pursuing corruption among the powerful and wealthy; general fatigue coming from a difficult economic situation for most. There is thus little enthusiasm and hope that fighting corruption, organised crime and other failings of the legal system will lead to any practical improvements in the daily situation of most citizens.

- The EC may look into a diagnostic study that identifies which levers of change are the most likely to generate support from the population for more sustained judicial reform.

Champions of change exist but have little voice. There are CSOs that track dimensions of rule of law, such as the Union of Free Trade Unions (UFTU), which look at issues such as socially fair and transparent privatisation, and provide free legal aid to members. The Network for the Affirmation of the Non-Governmental Sector (MANS) is a non-governmental organisation that works to expose corruption and crime in Montenegro, and monitors freedom of information and procurement.

- It is important to empower actors that can play a rights-holder's role vis-a-vis public authority across Montenegro, to push for compliance of those key laws and frameworks that are in place.
- CSOs that are given monitoring tasks need to be provided the resources to carry these out while ensuring that their independence is respected.

Incentives for 'champions of change' are largely negative. People who have identified cases of corruption and organised crime have been physically threatened, judges and prosecutors have little protection, and protection of whistle-blowers is poor and not properly addressed in legislation. The pressures to increase the productivity of the legal system means nobody wants to prosecute corruption and organised crime because these are very time- and resource-intensive cases and thus hurt possibilities for promotion. There is a high risk of reversal of decisions of such cases in appellate court, in which case the time and effort spent is wasted.

- The problem of negative incentives for key actors should be analysed and possible changes introduced as part of a more holistic programme for judicial reform.

5.2.2 Programming Financial Assistance

Sector and Donor Co-ordination. General sector and donor co-ordination has been weak. In practice, it has tended to be ad hoc, addressing issues of duplication, alignment or co-ordination on specific issues and sectors. In May 2010 the Government of Montenegro approved a document describing the system of co-ordination of donor support.

- This "institutionalisation" process should be taken forward and developed into increasingly structured arrangements where respective donor and Government commitments and agreed codes of behaviour are written down in a formal Memorandum of Understanding (MoU). A MoU of all stakeholders in the rule-of-law area would help to create a "ratchet effect", whereby agreements once reached are consolidated through the drafting process and become less subject to reversal if circumstances or personalities should change. This seems particularly important in view of the introduction of the sector based approach.
- The MoU should cover the common procedures related to consultation and decision making, disbursement, monitoring and reporting, review and evaluation, audit, financial management and the exchange of information and cooperation agreed upon between the signatories (government and donors), and its annexes give operational expression to these principles and terms. Where budget support is envisaged, the MoU should stipulate the conditions under which the support will be delivered.

There is no unique methodology applied to strategy development. Existing strategies are rather disparate with regard to the process in which they have been developed and their structure. The most substantial flaw in the contents of some of the strategies or plans in the rule-of-law area is that they contain long lists of objectives and activities without any assessment of their budgetary consequences, let alone financial commitment. The extent to which such strategies represent real priorities is likely very limited. These strategies hence do not provide the information necessary for a sector approach.

- The Government should, in consultation with the judiciary and other relevant stakeholders, develop and implement a methodology for preparing strategies and policies in terms of process design and structure.

Need to understand totality of transformational challenges and costs. There is a feeling that the international community has been pushing large-scale changes in formal laws and frameworks without completing the task: bylaws and complementary regulations are often missing, changes in roles and responsibilities are not made clear, and staff is not properly trained and thus cannot apply the new laws as intended. There is a need to ensure that all these complex changes are fully supported.

- Support to justice sector must be long-term and comprehensive.
- Success criteria must cover entire delivery chain: production of new frameworks, laws, bylaws and regulations; capacities to investigate, prosecute, judge and incarcerate; actual prosecution of priority cases reflecting accountability of system and equality before the law.

5.2.3 Implementation of Activities

CSOs require capacity development. A number of CSOs are engaged in advocacy and watch dog functions regarding judicial reform. Yet civil society is still incipient and will require further capacity development as well as political support. Links to other parts of civil society – knowledge/research centres, labour unions, professional associations, faith-based organisations – could be supported. The requirements for own funding – normally 5-20% - for CSOs to apply for EC funding is too demanding.

- Procedures, requirements for CSOs to apply for support need to be simplified, streamlined.
- One possible model for future support is a CSO fund managed by an independent body (not itself eligible to apply for funds), to scale up funding, improve capacity development initiatives across actors, standardise and simplify performance monitoring and reporting, and reduce administrative costs to the EC.
- A number of new EU Member States managed to build up a CSO sector by allowing tax payers to dedicate a certain percentage of their tax dues (e.g. 5%) to specific CSOs of their choice. To the extent that the tax collection system in Montenegro is functioning, such a scheme can facilitate CSOs get a diversified funding base and democratic legitimisation.

Public procurement is still a problem. Although recent progress reports come to a positive conclusion on the advancement of transparency in public procurement (a new Law on public procurement was enacted in July 2011), it is still considered a major source of corruption. This constitutes a major challenge for all EC funded activities in general but for any anti-corruption programme in particular since the incentives to address the problem tend to be negative as far as important local actors are concerned.

- Projects need to have common approach to public procurement that provides incentives for “clean” procurement processes but in particular imposes tough sanctions on identified cases of corruption.

Different parts of the business community have different interests when it comes to combating corruption. Public procurement constitutes a large share of total economic activity. Combined with public permits based on a complex business environment provides the public sector many leverage points for extracting benefits from private companies, which means that those who want to succeed “get ahead by going along”. According to a number of informants, this is a major challenge for the anti-corruption work. The challenge is to identify those businesses that would benefit from a more equal playing field and thus have incentives in seeing corruption and favouritism being addressed. This would include local/small-scale businesses that do not benefit from political patronage; international investors that are not willing to pay bribes; etc.

- The EC needs to partner with other actors in identifying and supporting “champions of change” in a long-term and more consistent manner if the culture of corruption and impunity is going to have any chance of success.

5.2.4 Monitoring and Reporting Results

ROM reports useful but too narrow and too optimistic. The ROM reports are the only external verification that is carried out on a systematic basis across sectors and projects and over time. It uses a coherent methodology and provides ratings based on a defined set of criteria. But the analysis is limited, narrow and technical. It can therefore be useful as a “thermometer” on how a programme or sector is moving. But in particular the last two dimensions, “Impact to date” and “Potential sustainability” necessarily must be quite speculative.

- The EC may discuss with the ROM framework contract holders the criteria for rating performance in light of larger implementation conditions, to ensure that realism and conditions for providing a “B” in Montenegro is comparable to a “B” in places like Serbia.

Surprisingly little independent performance tracking. While ROM reports are useful, they are limited in their ability to track performance in the sector – they provide “within the box” assessments of how individual projects are performing. The annual Progress Reports are very useful overviews of general trends and weaknesses but lacking in the more rigorous performance review and ratings that the ROM reports provide. Given the importance of the sector for the EU accession process and the structural and practical stumbling blocks that Rule of Law processes are encountering, it may be useful to have more careful results reporting put in place to ensure that the EC is fully aware of systemic problems and real progress.

- For the assessment of performance, the sector approach represents both a challenge and solution. A Performance Assessment Framework is an integral part of any sector approach and the basis for policy dialogue and co-ordination. Usually, however, it is also conditional upon the existence of properly prioritised policies, effective co-ordination frameworks, reliable budget systems and a „culture“ of monitoring and evaluation which is capable of using new and deviant information on the systems blind spots as a basis for learning. The last mentioned factors can be influenced only in the long-term. Improving monitoring despite the prevalence of incoherent strategies, poor financial predictability and ad hoc co-ordination may still be an option to attain short-term progress while gradually upgrading the other elements of the sector approach (see also the section on monitoring below).

5.3 Looking Ahead

The EU accession process is the main driver of IPA funding. Based on the experiences from the accession dialogue with Bulgaria and Romania and subsequently with Croatia, the Commission has made it clear that chapters 23 and 24 addressing Rule of Law will be the priority areas of attention for the negotiations.

The programming for the coming seven-year cycle of IPA funding 2014-2020 thus provides a unique opportunity for reconsidering the overall approach to Rule of Law performance. A number of general principles seem to flow from both the assessments of earlier performance and the views and recommendations by various stakeholder representatives.

5.3.1 Changing Frameworks for Rule of Law Activities

1. National parameters for longer-term programming need to be in place for sector programming to be realistic: public financing, legal/regulatory frameworks, and institutional structure. To the extent any of these are missing, they should be among the top issues on the reform agenda.
2. Rule of Law transformation is going to be costly in terms of financing, time and staff – but is required if real changes are to be produced. The EC should set aside significant IPA resources for this, but equally important should ensure own capacity in the Delegation that can both carry the policy dialogue as well as monitor the performance of the various actors that are receiving program/ project support.

5.3.2 Programming and Implementing Rule of Law Activities

3. Reducing the number of basic programming instruments and their periodicity for IPA II, as is intended, is strongly supported. While overarching objectives can be defined and foreseen to remain stable during the period, sub-components and implementation details can be allowed to shift flexibly.
4. The EU should commission an in-depth study to assess the gaps against the main elements of sector policy support programmes: sector policy, sector budgeting, sector and donor co-ordination, institutional setup and capacity issues, performance assessment frameworks, macroeconomic framework, and public financial management. Based on the results of the assessment, intensive awareness and learning and development opportunities should be organised in order to address these gaps.
5. Government should adopt and implement a stringent and uniform methodology for preparing strategic documents. The agencies involved in policy making in the areas of rule-of-law, judicial reforms, anti-corruption and anti-organised crime should be supported in applying the methodology.
6. Programming in a contentious field like judicial reform should be based on an inclusive programming process to ensure broad stakeholder involvement, ownership and agreement. All eligible stakeholders should participate in the programming from the first day. These include state organisations, such as the Judicial Training Centre, as well as non-governmental organisations, such as the professional associations for judges, prosecutors and administrative staff of courts.
7. Because RoL activities tend to come up against unforeseen blockages, flexibility in reallocation of resources, shifting of timelines etc. should be accepted and quickly processed: while

Outcomes normally would remain fixed, Output prioritisation and activity schedules may be reformed.

5.3.3 Monitoring and Reporting Rule of Law Activities

8. Given the absence of well-developed sector frameworks, monitoring of sector performance is limited. This condition also impacts the programming and implementation of donor funds, where the absence of timely and accurate data on sector performance makes it difficult to allocate donor resources in a way that they catalyse desirable developments. In these circumstances, addressing issues cutting across institutional responsibilities remains difficult.
9. These conditions have been known for some time, and no quick fixes can be expected. An alternative approach, which when implemented consistently over a period of several years, may lead to the strengthening of sector planning and programming would start with a sector performance assessment framework (PAF). For the reasons mentioned in this report, in the early stages this performance assessment framework will not have significantly coordinated programmes to monitor.
10. The PAF would ask participants to agree on a single set of priority actions in a given sub-sector of the rule-of-law area, and quality indicators. Based on these actions, the PAF would provide sector working groups (or performance assessment teams) with diagnostic information that would allow them in the medium term to develop proper sector programmes and strengthen donor and government support for those programmes.
11. The implementation of the PAF could, within a few years, lead to sector programmes within which the government and all donors plan their investments. Some donors may invest directly through the government budget with targeted activities managed by the government using regular or enhanced implementation means. Other donors may continue with project-managed funding. However, all investments, either on- or off-budget could be directed at the single purpose of achieving sector outcomes. In order to achieve this, a well-defined consultative process will be needed.
12. The PAF focus will not be on monitoring individual projects, or individual government outputs, but on the impacts that emerging priority policies are having as a whole. This is where we have seen the biggest deficits in the ROM process. As a result, the ultimate objective of the PAF would be to provide a collective, impact-level assessment of all investments within the rule-of-law area, based on agreed key performance indicators, and expressed in simplified reporting mechanisms for all stakeholders. The end result will inform modifications in strategic and future operational planning.
13. The framework should be driven by a number of important underlying principles:
 - **Rationalisation.** An efficient and straightforward system of collective monitoring by all stakeholders, which reduces the administrative burden at all levels;
 - **Harmonisation.** A single framework for monitoring, evaluating and reporting on all Government activities in the rule-of-law area;
 - **Co-ordination.** a single forum per sub-sector for stakeholder discussion of progress and assessment of follow-up measures;

- **Stability of resourcing.** the measurement of progress in the context of longer term commitments;
 - **Standardised measures of progress.** a single agreed set of sector performance indicators and outcomes;
 - **Focus on impact.** progress measured by improvements in service delivery – i.e. outcomes relating to access, quality and governance;
 - **Linking with remedial actions.** The process of the PAF is completed when recommendations arising from M&E activities are fed into strategic and operational planning.
14. The main output of the PAF would be an **Annual Performance Report** in the area of rule-of-law, for each of the sectors participating in the process (e.g. judicial reforms, anti-corruption, organised crime). The report is prepared by an assessment team in consultation with the relevant ministries. A mid-term review three years after the launch of the PAF will focus on whether adjustments are needed in policies, targets, indicators, and implementation arrangements.

Annex J: Country Report, Serbia

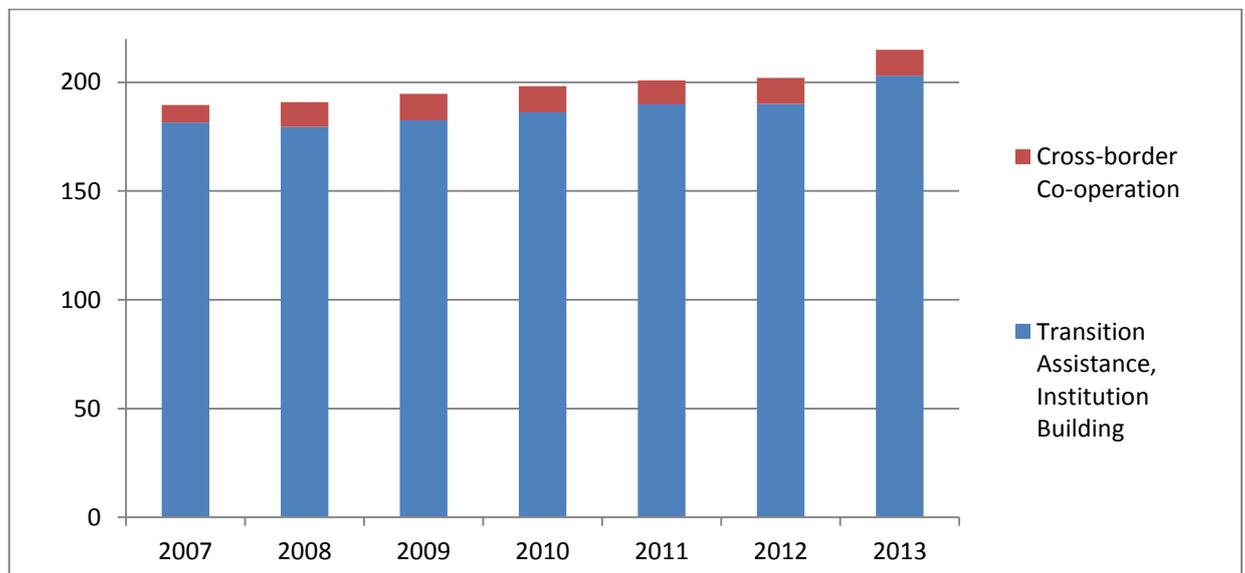
1. Country Strategy and Program

After the wars following the dissolution of Yugoslavia and the fall of the Milošević regime, the EU and the Federal Republic of Yugoslavia (FRY) established a consultative task force in July 2001 to address the possible accession process for the FRY. In March 2002, the FRY was turned into the more decentralised State Union of Serbia and Montenegro, and in July 2003 the EU entered into what was termed an Enhanced Permanent Dialogue with the State Union. One year later, in June 2004, the European Council decided to enter into a European Partnership (EP) and in October the same year began a process toward a Stabilisation and Association Agreement (SAA).

By October 2005 the negotiations for an SAA had begun, but after six months, in May 2006, two steps brought this to a halt. Montenegro, in a national referendum, had decided to leave the State Union, and the EU at the same time called off the negotiations due to lack of progress regarding Serbia's cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY).

In June 2007, the SAA negotiations resumed as Serbia had made tangible commitments to cooperate fully with the ICTY, and in April 2008 the SAA was signed. Both the SAA and the Interim Agreement on trade and trade-related matters were subsequently ratified by the National Assembly of Serbia in September 2008. In June 2010, the EU foreign ministers agreed to submit the SAA to the member states for ratification and by November 2012 all but one EU member had ratified.

Figure J.1: IPA Assistance, Serbia, 2007-2013, in € million



In December 2009, Serbia – along with other Western Balkan states – was granted visa-free access to the EU, and Serbia officially applied for membership in the EU that same month. In October 2011, the European Commission recommended Serbia as a Candidate Country, and in March 2012 the European Council granted the candidate status.

Serbia has been eligible for IPA funding from the beginning, and figure J.1 shows the allocations over the six years 2007-2012. From a total of € 190 million in 2007 for the Transition Assistance and Institution Building (TAIB – IPA component I) and Cross-border Cooperation (IPA component II) for which Serbia has been eligible, this has grown slowly to the 2012 total of around € 207 million.

1.1 Rule of Law Situation

At the start of the IPA period of 2007, the annual Progress Report (2007) defined the following to be the key priorities for Serbia:

- Ensure full cooperation with ICTY;
- Ensure that the constitution and constitutional law are implemented in line with European standards;
- Improve the functioning of the judiciary, guarantee its independence, professionalism and efficiency and ensure that the career development and recruitment of judges and prosecutors are based on technical and professional criteria and free from political influence;
- Step up the fight against corruption at all levels and develop a comprehensive public system of financial control to increase transparency and accountability in use of public finances.

Under the more specific political criteria, priorities for **judicial reform** were seen to be:

- Ensure the full independence of the courts and prosecution system and strengthen the office of the prosecutor for war crimes;
- Implement the action plan on the judicial reform strategy;
- Adopt and implement legislation on mandatory initial and continuous training for judges, prosecutors and court support staff and strengthen the training centres;
- Rationalise the court system, modernise proceedings, introduce an effective court management system and establish administrative and appellate courts;
- Create an IT network for prosecutors at all levels, ensure enforcement of court decisions and further strengthen the capacity to try war crimes domestically in full compliance with international obligations to the ICTY.

Regarding **Anti-corruption** efforts the priorities were:

- Implement the action plan on the anti-corruption strategy and establish an independent and effective anti-corruption agency;
- Ratify international conventions against corruption;
- Further clarify and enforce regulations related to the prevention of conflict of interests, in line with international standards and to develop and implement a transparent system of declaration of assets of public officials.

In the **Fight against organised crime and terrorism**, the emphasis was on:

- The adoption of outstanding legislation;

- Development of the capacity to seize assets, implement a national strategy against organised crime and strengthen criminal intelligence;
- Continue the fight against trafficking in human beings, including implementation of the strategy for prevention of trafficking and provision of adequate assistance and protection to victims;

Increase the efficiency of international cooperation and implementation of the relevant international conventions on terrorism as well as to improve cooperation and the exchange of information between all branches of the security services and with other states and prevent financing and preparation of acts of terrorism

1.2 Country Programming and Country Programmes 2007-2011

The general structure for the programming of the IPA funds over the period 2007-2012 is shown in figure 2.2 in the main report. The European Partnership provides the strategic and programmatic foundations for the Stabilisation and Association process and Agreement (SAp and SAA) that are to ensure that Serbia is able to meet the accession criteria, generally referred to as the “Copenhagen criteria” of political requirements, socio-economic requirements, and European standards (*acquis*).

A Multi-annual Indicative Financial Framework (MIFF) provided the overall financial framework for EU support to the region over the coming three years, giving allocations across countries and main sectors. Based on the MIFF, country-based Multi-Annual Indicative Planning Documents (MIPDs) were prepared for the current year and the following two years. From the MIPDs, annual National Programs of specific projects were then agreed to.

A key consideration with the introduction of IPA funds was to strengthen national ownership and gradually move towards the Decentralised Implementation System (DIS) for IPA funds. The Serbian European Integration Office (SEIO) acts as the focal point with regards to EU funding, and the Director of SEIO is the National IPA Coordinator (NIPAC). SEIO thus assists Serbia’s ministries and other public offices in preparing proposals for IPA funding, and at the same time acts as the main interlocutor to the local EU Delegation regarding programming, monitoring and reporting on the use of IPA funds. The Development Aid Coordination Unit (DACU) within SEIO tracks overall foreign assistance to Serbia and thus also IPA funding. IPA funds are currently managed by the EU Delegation till Serbia has been approved for DIS status.

The first MIPD (C/2007/2497 of 18.06.2007) covering the years 2007-2009 was structured according to the three main categories of the ‘Copenhagen criteria’, where the first point noted under the Political Requirements was to strengthen the principles of the separation of powers between Parliament, Judiciary and Government (ibid p. 15). An important component was the consolidation of the Rule of Law which included standardized training and education of the legal profession, police and prison reforms, strengthening the independence and quality of the judiciary, and strengthening the fight against corruption and organised crime. Strengthening of civil society was included here in part to monitor government policies and programs. No funding allocations across program areas were specified, however.

The subsequent MIPD 2008-2010 has the same structure and largely the same objectives in the field of Rule of Law, though underlines the need for full cooperation and compliance with the ICTY. An overview table showing EU assistance shows a general allocation to Justice and Home Affairs

(JHA) of € 16.5 million for 2007. The MIPD for 2009-2011 (C/2009/4359 of 09.06.2009) continues the structure and contents for the program, though the allocation to JHA is reduced to € 7 million.

The MIPD 2011-2013 introduces a more sector-based approach focusing assistance on seven sectors: JHA; public administration reform; social development; private sector development; transport; the environment, climate change and energy; and agriculture and rural development. The indicative allocation for the three years for JHA jumps quite dramatically to € 75 million. It was based on national programs: the *National judicial reform strategy* (2006), the *Reform of the correctional system in Serbia* (2005), the *National anti-corruption strategy* (2005) and its implementation plan from one year later, the *National strategy for the fight against organised crime* (2009), and related *Integrated border management strategy* (2006) and the *Customs risk analysis and risk management strategy* (2008).

Throughout the period cross-border cooperation was also used to promote capacity building and dialogue with authorities of neighbouring Bulgaria, Hungary, Romania, Bosnia and Herzegovina, Croatia and Montenegro, with funding being around € 11-12 million/year.

1.3 National Programs 2007-2011

While in some other countries in the region the MIPDs included detailed project allocations, the Serbia MIPDs have kept funding allocations fairly general, at the sector levels. The latest one available, for 2011-2013, even provided fairly even mathematical shares to the seven sectors rather than allocate by core programs or objectives within the various sectors. The individual projects have therefore been programmed with the overall sector allocations as financial constraints but without clear prioritisations in terms of relative funding levels.

Given this task's focus on Judicial Reform, Fight against Corruption and Fight against Organised Crime, there are nine projects that have been approved for IPA funding that are relevant to this review, listed in table J.1 below. Total funding over the period is thus just over € 37 million.

In the most recent MIPD (2011-2013), the priorities for EU assistance was formally driven by Serbia's Needs Assessment that was to cover the period 2011-2013. This was itself to be in line with the EU's Enlargement Strategy and observations made in the EU's Progress Report on Serbia from 2010. In the field of Rule of Law, special attention was to be paid to judicial reform and the fight against corruption and organised crime (MIPD p. 10).

Table J.1: Relevant Rule of Law Projects 2007-2012 (budgets in €, rounded to nearest '000)*

Year	Project Title	Thematic field	Budget
2007	Improvement of efficiency & transparency of judiciary system	Judicial Reform	2,643,000
2007	Standardized System for Judiciary Education and Training	Judicial Reform	1,860,000
2008	Fight against Corruption	Anticorruption	2,143,000
2008	Improvement of Transparency and Efficiency (Prosecutors and Penal system)	Judicial Reform	4,500,000
2009	Capacity building of the Directorate for Confiscated Property and Improving the system of Criminal Asset Confiscation	Money Laundering	2,500,000
2010	Project against money laundering	Money Laundering	2,000,000
2011	Strengthening the Rule of Law in Serbia	Judicial Reform	3,250,000

2012	Support to the Serbian Criminal Justice System	Judicial/Police reform	4,850,000
2012	Support to the Rule of Law System in Serbia	Judicial Reform	13,400,000
		Total	37,146,000

*: Data are from DG ELARG/Brussels.

1.4 Findings and Conclusions

On the **overall programming**:

- Programming of IPA funds are driven by an overarching body of policy and agreements, (reflected in the EP /SAP/SAA “policy box” in figure 2.2) and operationalized in terms of funding through the MIFF/MIPD three-year rolling allocations.
- During the first three years the MIPD was updated annually, using the “Copenhagen criteria” for its structure. For 2011-2013, the MIPD is structured according to key sectors.
- None of the MIPDs are clear on the reasons for funding profiles (resource allocation criteria) or what are desired or expected achievements (results criteria, target values).
- Formal National Programs for Serbia are only available for 2010 and 2011, so the programming structure has missed an important intermediate component during the first years. Generally links from projects up to higher-level programming instruments are clear but this is to be expected since any particular project can always find “hooks” to more broad-based objectives. It is less obvious that the various projects selected are necessarily the most strategic, given the higher-level objectives in the more general resource allocation and programming documents – but overall **Relevance** of the projects appear very good.
- The individual project fiches detail the links back to the EP/SAP and the most recent MIDP, and any national strategies and plans that are in place at the time of project approval. The log frames and description of project activities became noticeably more detailed and operational during this period⁸⁰.
- Overall programming therefore improved considerably, moving from annual revisions of MIPDs that kept a rigid “Copenhagen criteria” structure and with little change to policy objectives, to a sector-structured MIPD for the current period, with National Programs added in to provide more contents to project selection. Project fiches have become much more detailed and the log frames generally more operational⁸¹ ().

Regarding “**lessons learned**” for future programming, the most recent MIPD document summarised the lessons up to that point with IPA funded activities as follows (MIPD 2011-2013, p. 10):

⁸⁰ The project fiches for the two IPA 2007 projects were 10-12 pages, the 2011 IPA one with a budget not too different from these was 86 pages. While length does not connote quality, in this case the 2011 fiche is clearly considerably better.

⁸¹ *Realism* of the various project proposals is difficult to assess given the short visit of the team but the ROM reports have generally given the projects good marks – “B”s – on this dimension.

- **A more focused MIPD.** The adopted sector approach should simplify the project identification process and provide better co-ordination for all stakeholders;
- **Increased administrative and monitoring capacity.** This is essential for Serbia to achieve accreditation for implementation of assistance under Decentralised Implementation System;
- **Better attention to project maturity.** This should also be linked to timely planning and sequencing of the programming process;
- **Better linking of assistance to Serbian sector strategies and action plans.** The MIPD 2011-2013 provides the EU with such an approach, and better donor coordination and division of labour with the EU based on these instruments and comparative advantages should be pursued.

2. Judicial Reform

The Serbian court system consists of 34 basic courts, 26 Higher Courts, 4 Appellate Courts and the Supreme Court of Cassation. There are some special jurisdiction courts: 16 Commercial Courts and Appellate Commercial Court, and 45 Misdemeanour Courts and Higher Misdemeanour Court. An Administrative Court was established recently. The organisation of the public prosecution reflects the structure of the general court system, where the Republic Prosecutor's Office is the highest. Public prosecutors' offices of special jurisdiction have been established for war crimes and for organised crime and corruption. In addition comes the country's Constitutional Court⁸².

The Progress Report from 2008 pointed out that premises for the new appellate and administrative courts had been provided but were not yet in operation. The overall professionalism of judges and prosecutors was seen as relatively high and has been further improved by training provided by the Judicial Academy. Remuneration of judges and prosecutors also improved. The legislative framework to implement judicial reform, as provided for by the new Constitution, is still not in place. Considerable efforts still was seen as required by Serbia to ensure the independence, accountability and efficiency of the judicial system, so overall there was limited progress with the judicial reform process, which is a key priority of the European Partnership.

The Progress Report of 2009 noted the December 2008 set of judicial laws adopted that introduced a broad reform of the judiciary. They included laws establishing the High Judicial Council (HJC) and the State Prosecutorial Council (SPC), on judges, the organisation of courts, and on the public prosecution service.

The following year, the 2010 Progress Report pointed to the Law on the Judicial Academy being adopted in December 2009 and the Academy established as the body responsible for the vocational training and continued professional development of judges, prosecutors and judicial staff. New Court Rules of Procedure were adopted that regulate the work of courts and the internal organisation of the new court network. A new Law on Expert Witnesses was adopted in June 2010.

⁸² The Constitutional Court is not considered part of the judiciary but is to carry out judicial review to verify if laws, decrees and other legal decisions are in accordance with the country's constitution. It has 15 judges. The apex court of the judiciary is the Supreme Court of Cassation. Like the Constitutional Court it sits in Belgrade and has a total of 24 judges, some of whom also sit on the High Judicial Council. The team met members of the Supreme Court of Cassation but not from the Constitutional Court during the field work.

The 2011 Progress Report pointed out that the independence and self-administration had been strengthened with the actual establishment of the HJC and SPC since these were now responsible for selection and promotion of judges and prosecutors. This included defining the criteria for and implementing a general reappointment procedure for judges and prosecutors, though constitutional and legal provisions on appointments, promotion and dismissals in the judiciary still needed to be brought into line with European standards. The report noted the restructuring of the court network, including the creation of an Administrative Court, and a new law on enforcement of court decisions as appropriate steps for increasing the efficiency of the judiciary.

The 2012 Progress Report points to the amendments for improving the efficiency of the Constitutional Court that were adopted in December 2011. In line with the recommendations of the *Venice Commission* (formally the Council of Europe's *European Commission for Democracy through Law*), constitutional changes and further measures need to be adopted to reduce the growing backlog of cases in the court system.

Despite the progress made regarding the independence of the judiciary, the legal framework still leaves room for undue political influence over the judiciary, in particular as regards Parliament's power to appoint judges and prosecutors and its direct participation in the work of the HJC and the SPC. The re-appointment procedure carried out for judges and prosecutors in 2009/2010 and the review process to correct its shortcomings were overturned in July 2012 by the Constitutional Court, in large part because of the concern over political interference.

The impartiality of judges has in general terms been strengthened due to automated allocation of court cases, which has now been introduced in all commercial and general courts. New case management software has been introduced in the Administrative and Appellate Courts in Belgrade and the Supreme Court of Cassation in July 2012.

To ensure accountability, the HJC and the SPC have established disciplinary systems. The rules on procedure and liability adopted in July 2012 seem to be fully aligned with European standards.

A number of laws came into force aimed at improving the efficiency of the judiciary and applying international standards in national courts. The Judicial Academy selected a new generation of students and provided a variety of in-service training programs for judges, prosecutors, judicial staff and attorneys, which still need to be systematised and structured.

The new Civil Procedure Code has been in force since February 2012. It aimed at increasing efficiency in civil procedure cases, which accounts for two-thirds of all cases before the Serbian courts. The first private bailiffs were sworn in and first notaries selected in May 2012. However, the entry into force of the law on public notaries was postponed to 2013.

Major imbalances in the workload of judges persist between courts, particularly between those in Belgrade and other courts. A comprehensive analysis of the functioning of the new court network is needed in terms of cost, efficiency and access to justice. The quality of judicial statistics needs to be improved. The new Criminal Procedure Code has been applied in organised crime and war crimes cases since January 2012 (and is to be applied in all criminal cases as of October 2013). It introduces a new model of criminal investigation, giving the prosecution the lead role in collecting the evidence and presenting it before the court. One aim is to shorten the investigative phase, but this will require that the prosecution services rise to the complexity of this role. The fully adversarial

system raises questions regarding procedural safeguards, especially the ability of poorer defendants to finance an effective defence, a concern echoed by the Ombudsman and the Commissioner for Free Access to Information of Public Interest. At the same time, the prosecution service still has to demonstrate its ability to obtain convictions in high-level cases against well-funded defence teams. A careful analysis of the implementation of the legal framework on abuse of office or authority also needs to be conducted in order to ensure that it is consistent and proportionate. Generally, Serbia needs to ensure that procedural safeguards are applied consistently across the country.

2.1 Assistance Provided

The ***National Judicial Reform Strategy*** was adopted by Serbian National Assembly in May 2006. Its basic objective is to restore public trust in the judicial system by establishing the rule of law and legal certainty. The Strategy relies on four key principles: judicial independence, transparency, accountability and efficiency. Along with its Action Plan, it expired in 2011.

The projects funded by the EU have been aligned with this strategy. The 2008 IPA project has been designed as a continuation of the *Improvement of Efficiency and Transparency of Judiciary System* project approved as part of the IPA 2007 programming cycle. The IPA 2007 project related to reforms in the court system while the 2008 project focuses on prosecutors' offices and the penal system. This project is to contribute to the reform of the judiciary system through establishing an integrated IT system that connects courts, prosecutors' offices and penal institutions. This system is also to strengthen court management and court statistics as well as increase transparency by enabling citizens' access to necessary information regarding a particular case.

A structural change in how the EU funds RoL activities is in connection with the establishment of the multi-donor trust fund (MDTF) for Strengthening the Rule of Law in Serbia, managed by the World Bank. The 2011 EU project contributed to this through the first components of the project, Justice Sector Reform, which is thus implemented through direct agreement with the World Bank. The other sub-component of the project will be done under direct EU implementation and a separate project steering committee composed of representatives from the EU Delegation, the Ministry of Justice, and the Council of Europe is responsible for this part of the project. The 2012 projects have not yet been fully designed but will build on what has already been supported.

Table J.2 presents the projects funded from IPA 2007 to 2012 directly related to judicial reform:

Table J.2: Projects addressing Judicial Reform, IPA 2007-2012

IPA	Project title	EU €	Description
2007	Improvement of efficiency & transparency of judiciary system	2,643,000	The project is to improve efficiency and transparency of the judicial system by shortening the length of proceedings and reduce the backlog of cases at court; build institutional capacity to better monitor and evaluate the functioning and efficiency of the judicial system, and improve the transparency of court proceedings and the judicial system.
2007	Standardized System for Judiciary Education and Training	1,860,000	The project is to strengthen RoL and sound functioning of the judiciary by raising the professional qualifications of key legal and judicial personnel by strengthening management and human resources at the Judicial Academy; support the initial professional program for candidate judges and prosecutors; and improve oversight and information management systems.
2008	Improvement of Transparency and Efficiency (Prosecutors and Penal system)	4,500,000	The project is to improve the efficiency and transparency of the judicial system by introducing an efficient case management and statistical system and increasing public access to information in all judicial branches
2011	Strengthening the Rule of Law in Serbia	3,250,000	The project is to support implementation of justice sector reform and anti-corruption policy by contributing to World Bank MDTF and improve capacities and quality of the implementation of institutional reforms aimed at preventing and combating corruption.
2012	Support to the Serbian Criminal Justice System	4,850,000	
2012	Support to the Rule of Law System in Serbia	13,400,000	

2.2 Results Achieved

The IPA-funded projects are ongoing. The EU in its Progress Reports is concerned that progress is insufficient. The key issue is that the new legislation is not being used and enforced properly to improve efficiency and full implementation of the Rule of Law. The EU believes the authorities must take additional measures to strengthen the independence, impartiality, competence, accountability and efficiency of the judiciary. It further recommends that a comprehensive analysis of the functioning of the new court network in terms of cost, efficiency and access to justice as well as improvement in the quality of judicial statistics is needed. To meet these challenges, it recommends a new strategy on judicial reform, together with an action plan to implement the strategy, based on a functional review of the judiciary.

The bottom line is that while formal institutional and organisational frameworks and capacities are in place, performance is not yet at required European standards.

The Results Oriented Monitoring (ROM) reports carried out by the EU reveal the concerns the EU has, as shown in table J.3 below. The **Relevance** and Quality of design on those projects monitored all get a B: while the relevance *per se* is seen as quite good, there are often short-comings in the designs in terms of addressing key challenges. On the **Efficiency**, the earlier monitoring visits gave

a “C” primarily due to delays in start-up and lack of local capacities to move projects forward. This has improved over time, but no project has scored higher than a “B”.

Table J.3: ROM Reports, Judicial Reform-relevant Projects

Project title	Date	RQD	EID	ED	ID	PS
Establish independent, reliable, functioning judiciary and enhancing judicial cooperation in W Balkans	2007	B	C	B	B	B
Support to the Prosecutors' Network	2008	B	C	B	B	B
Support to the Prosecutors' Network	2009	B	C	B	B	B
Technical Assistance to High Judicial Council	2009	B	B	C	B	B
Development of monitoring instruments for judicial, law enforcement institutions in Western Balkans	2010	B	B	B	B	C
Support to National Judicial Academy	2010	B	B	B	B	B
Technical assistance to improve efficiency and transparency of Judiciary System	2010	B	B	B	B	C
Technical assistance to improve efficiency and transparency of Judiciary System	2011	B	B	C	C	C

Ratings categories: “RQD”: relevance and quality of design; “EID”: efficiency of implementation to date; “ED”: effectiveness to date; “ID”: impact to date; “PS”: potential sustainability. **NOTE:** Some ROM reports that took place between the ones listed – some projects were monitored every six months – have not been included.

The **Effectiveness** of the projects – the degree to which projects are delivering useful Outputs for the objectives of the projects – scores somewhat better than Efficiency. That is, once the projects begin delivering, what is produced is useful and to a large degree as intended. What is interesting is that the “**Impact to date**” dimension scores as well or better than the Effectiveness dimension (while Technical Assistance to the HJC only gets a “C” for Effectiveness it scores a “B” for Impact to date based on what was seen as the positive results on the HJC and SPC as results of project activities). As far as **Sustainability** is concerned, the relative solidity of Serbia’s public sector and its finances and the recognition that Serbia has put in place an appropriate structure and body of law gives the ROM teams the impression that most of the achievements are likely to be sustained.

2.3 Findings and Conclusions

- Serbia has carried out a major reform of its judiciary, including strengthening its independence through the establishment of a High Judicial Council and State Prosecutorial Council with responsibilities for selection and promotion of judges and prosecutors.
- The court system has been restructured, with special courts for commercial and misdemeanour cases, a separate administrative court, and similar restructuring of the prosecutorial services including special offices for war crimes and for organised crime and corruption. The Constitutional Court remains an independent institution outside the judiciary.
- EU support has focused on core concerns in the country’s 2006 National Judicial Reform Strategy, assisting the HJC and SPC; the Judiciary Academy for upgrading skills of relevant personnel in the sector; strengthening court management systems; and support to sector reforms, including through the World Bank administered MDTF. Serbia thus has an overall

reformed legal structure with a more independent judiciary, improved systems, systematic upgrading of skills, professionalization and separation out of offices dealing with particular issues (misdemeanour, commercial, war crimes, etc.), so overall the framework for a modern judiciary in line with European standards is largely seen to be in place.

- Concerns exist regarding the efficient and effective functioning of the judiciary, the ability to address back-logs and to provide fair and transparent processing of cases. Serbia thus is seen to be lagging in the use and implementation of the new institutions and capacities that have been created – *performance* is still not in accordance with European standards.
- A greater disquiet exists with regards to the independence, quality and accountability of the judiciary especially in the key fields of organised crime and corruption. These are particularly complex forms of crime that require considerable skills and resources, but also pernicious as far as potential abuse of state power is concerned. The linked-in problem, of state power trying to influence the judiciary to avoid judicial oversight and control, is the overriding worry.

3. Fight Against Corruption

Corruption and anticorruption policy have been major political issues in Serbia since the mid-1990s. Based on the pressure of the EU from the Stabilization and Association Agreement (SAA) (2008) and the application for EU membership in 2009, the Serbian government made the issue a top priority.

The Ministry of Justice prepared a National Anti-Corruption Strategy (NACS) in line with the recommendations of an assistance programs with and by the Council of Europe. In December 2005, the National Assembly adopted the decision on establishing the NACS. One year later, the government adopted the Strategy Implementation Action Plan. Subsequently, the Law on the Anti-Corruption Agency (ACA) was adopted in 2008, with the ACA becoming operational in January 2010. ACA was allocated premises, funding and initial technical and administrative assistance. Progress was reported in access to information of public importance, where there was a considerable increase in the number of requests.

The 2008 Progress Report referred to some progress in developing a comprehensive anti-corruption policy but that capacities of the law enforcement bodies to investigate corruption cases were limited. This has also been noted in the ACA 2012 annual report: *“On the other hand, it is a fact that there is a certain lack of synchronization between the Agency and other competent authorities in coordinating the fight against corruption (this primarily refers to the prosecution and judicial authorities, and also to a lesser number regulatory bodies).”*

In March 2011 the ACA issued its Annual Report for 2010 which includes a report on the implementation of NACS and the Action Plan for the implementation of NACS. Five years after the development of this Plan, this is the first document that elaborates on the status of its implementation.

The Civil Law Convention on Corruption and the Additional Protocol to the Criminal Law Convention on Corruption were ratified in November 2007. The compliance report was submitted to the Council of Europe's Group of States against Corruption (GRECO) in December 2007, and the 2009

Progress Report noted that Serbia was implementing GRECO recommendations and international conventions.

The 2010 Progress Report pointed to amendments to the Law on Civil Servants and the Law on Free Access to Information that introduced the obligation for civil servants to report corruption and provided a certain protection from retaliatory measures. Also the access to information was improved. As regards the processing of corruption cases, the report noted improved cooperation between the police and the state prosecution. Overall, the institutional framework to fight corruption is in place with the ACA finally starting its work in January 2010.

The 2011 PR noted the existence of the legal and institutional frameworks to combat corruption, including a new Law on Financing Political Activities in line with European standards. It also applauded authorities for launching a review of the outdated strategy and action plan for the fight against corruption. It praised steps taken towards specialisation of the law enforcement agencies and noted that a greater number of cases have been prosecuted. Yet corruption remains prevalent in many areas and continues to be a serious problem, and therefore stronger political will is needed in order to significantly improve the performance in combating corruption.

The competences and capacities of the ACA need to be strengthened. Law enforcement authorities must adopt a more pro-active approach in investigating and prosecuting corruption, and the judiciary needs to significantly build up a track record of final convictions, including in high level cases.

In 2010, the powers for dealing with high level corruption – over € 2 million – and for corruption offences committed by certain state officials were transferred to the special prosecutor for organised crime and the special departments for organised crime in the Higher and the Appellate Courts in Belgrade.

In the 2012 Progress Report, as in the previous ones, it is pointed out that corruption remains prevalent in many areas and continues to be a serious problem. The legislative framework still shows shortcomings, in particular with regard to the protection of whistle blowers. The new Law on Financing Political Activities, adopted by the National Assembly in 2011, provided legislative framework for monitoring of political entities in the electoral process. Within its competencies the ACA become responsible for monitoring election campaign costs and supervision of political funding. Implementation of the legal framework of the fight against corruption has continued but a new Anti-Corruption Strategy and Action Plan are still awaited.

Box J.1: Public Procurement and Corruption

Public procurement is a major source of corruption in most countries. Serbia passed a new public procurement law in 2002. An evaluation concluded that Serbia's procurement regime was in line with EU regulations and laws so the formal legal framework is in place, though the law still lacks appropriate regulations.

Serbia's Public Procurement Office (PPO) has about ten professional staff, and is a public *monitoring* office. It is thus not a true oversight body since it does not have enforcement powers. The PPO has established a very good database, and it sees some worrying trends.

While public procurement is about 10% of GDP and thus a significant market, especially now that the financial crisis has hit Serbia with full force, there are now on average only three bidders for each public contract whereas in 2003 the average was 8.5 firms. There is also an increasing share

of non-competitive solutions (only one bidder): in 2011 this represented about 26% of the contracts and 30% of value. The situation was even more serious for high-value contracts, over € 30,000. In 2003 about 14% of these had only one tenderer whereas in 2011 this had grown to about 40%! That is, the competition is even *less* for the larger contracts. *Transparency International Serbia* looked into this issue and their conclusion was that companies with ties to political parties win the contracts.

One major challenge is the very decentralised nature of public procurement: Serbia has about 12,000 procurement units since every school and health centre, for example, can do its own procurement. The PPO carries out a lot of training as part of their preventative work, and this has led to a decrease in *mis-procurement*: tenders not done according to the rules due to lack of knowledge of correct procedures, which is a big problem. But *corruption* in public procurement is an even more serious issue, since this is a *willed* distortion of the bidding processes.

If the PPO suspects irregularities, it either goes to the Supreme Audit Institution (SAI) or the Budgetary Inspection in the Ministry of Finance. The latter has never taken any action while the SAI has taken PPO reports more seriously, and they uncovered problem contracts worth € 800 million.

When the PPO has discussed procurement issues with judges, the latter say that public procurement is a new and complex field, and thus difficult to convict in court. Such cases are generally seen as time-consuming to investigate and require a lot of skills to fully understand, so they require considerable resources and in part for this reason it is often difficult to get sufficient support to address them properly.

The law enforcement authorities have shown a higher level of commitment to fighting corruption, leading to the arrests of several suspects, and a number of high-profile cases have been opened. Internal control is operational in all law enforcement agencies.

The overall conclusion, however, is that the implementation of the legal framework and the efficiency of anti-corruption institutions need to be significantly improved. Further efforts are needed to adopt a more proactive approach to investigating and prosecuting corruption and the judiciary needs to gradually build up a solid track record of convictions, including high-level cases, particularly in cases of misuse of public funds. Stronger political direction and more effective inter-agency coordination are needed to significantly improve performance in combating corruption.

3.1 Assistance Provided

Table J.4 shows the IPA-funded projects that address the fight against corruption explicitly.

Table J.4: Projects addressing Corruption, IPA 2007-2012

IPA	Project title	EU €O	Description
2008	Fight against corruption – support to establish ACA	2,143,000	Contribute to reducing the level of corruption in Serbia by strengthening the ACA in order to increase its capacities for implementing and further developing anti-corruption policies and legislation. Expected Results: <ul style="list-style-type: none"> • The ACA is fully operational with trained staff at all levels in line with the EU's best practice in the anti-corruption area; • Improved legal and institutional framework for the fight against corruption; • An awareness raising campaign aimed at providing citizens and other relevant target groups a better understanding of corruption and mechanisms for its prevention is implemented.
2011	Strengthening	3,250,000	Project Sub-component 2: Strengthening the capacities of law

RoL Component		enforcement and judiciary in the fight against corruption in Serbia To improve capacities and quality of the implementation of institutional reforms aimed at preventing and combating corruption.
Implementation of Justice Sector Reform and Anti-Corruption Policies		

As per its TOR, the IPA 2007 project *Support to the Establishment of the Anti-Corruption Agency* is being implemented along three components. The first one is Internal Capacity Building by providing a functional analysis of the ACA, an organisational development strategy, an assessment of training needs and development of training strategy, training curricula and production of training materials as well as by organising a study visit to an EU Member State. Component 2 is dedicated to improving the legal and institutional framework for the fight against corruption: by reviewing the NACS and Action Plan; monitoring and evaluation of the NACS; and developing the methodology for legislative corruption risk assessment (“corruption proofing”), institutional framework assessment of the Anti-Corruption Policy Cycle and assessment of the existing operational anti-corruption model. The last component is to raise public awareness through a public aimed at providing citizens and other relevant target groups a better understanding of corruption and mechanisms for its prevention is implemented.

The 2012 Monitoring Report says *“It is expected that the project impact will be significant in all areas of the anticorruption platform. Capacity of the beneficiary in consolidating the anti-corruption sector is improving. By all accounts, the project team has improved the quality of the outputs and made the project more efficient. However, a number of important developments concerning the leadership of the anticorruption activities after the elections⁸³ and the leadership of the ACA⁸⁴ still have an impact on implementation of the project activities.”*

As regards to the 2011 IPA project a specialised department within the Public Prosecutor’s Office for the prosecution of serious corruption cases was established. Furthermore, establishment of anti-corruption departments in the Republic Public Prosecution and District Public Prosecutions took place in Belgrade, Kragujevac, Niš and Novi Sad as the result of organizational changes aimed at enhancing capacities in combating corruption. These organizational changes were aimed at implementing the recommendations of the Council of Europe for departmentalization and specialization of the Public Prosecution as well through the implementation of a UNDP Project *“Institutional Support Project for Combating Public Corruption”*. A list of corruptive criminal offences was introduced and where specialised training was provided in order to increase further the quality of operations of the Public Prosecution. The mentioned Department shall deal with the prosecution

⁸³ The Ministry of Justice and State Administration took over the commitment to continue with drafting the new strategic anti-corruption framework. The Ministry took lead and initiated the establishment of new Working Group (WG) for drafting National Anti-Corruption Strategy (NACS).

⁸⁴ On 16 October 2012 the ACA Board initiated procedures for the dismissal of the ACA Director. At the ACA Board’s meeting held on 9 November 2012 the members of the Board dismissed the ACA Director and have appointed an Acting Director of the ACA.

of corruption and economic crime related offences linked with corruption and fraud of the state administration officials, elected officials, as well as high public officials.

In most cases, the bodies responsible for implementation of the adopted laws lack the resources, human and financial to adequately carry out their mandate. In addition, the key implementation commitments of the national strategy to combat corruption are yet to be fulfilled. The numbers of criminal proceedings against corruption cases need to be statistically compared against the number of allegations and charges raised, as well as the profiles of offenders (high public official vs. normal citizen's passive bribery or petty corruption). The reality in so far has been that building up a "corruption case" is still a challenge for the prosecution and the judiciary to accept and verdict it.

3.2 Results Achieved

The only external assessment carried out on EU-funded support in this field is a fairly recent ROM report assessing the 2007 IPA project. As can be seen below, the project overall receives fairly positive ratings, with a very positive "A" regarding the Impact to date. This is based on the assessment that *"The capacity building nature of the project enables the involvement of a large number of stakeholders at various levels and it is considered that the project will have a significant impact on all the targets groups and the society in general.... To some extent, there is a risk that political developments could appear and jeopardise the positive impact of this action. Fortunately, the project undertakes timely measures to mitigate any negative effects. Constant monitoring of the political developments is a vital control mechanism applied in this intervention"* (ROM report, 24 August 2012).

Table J.5: ROM Reports on Corruption Projects

Project title	Date	RQD	EID	ED	ID	PS
Fight against corruption – support to establish anti-corruption agency of Serbia	2012	B	B	B	A	B

Ratings categories: "RQD": relevance and quality of design; "EID": efficiency of implementation to date; "ED": effectiveness to date; "ID": impact to date; "PS": potential sustainability. **NOTE:** Some ROM reports that took place between the ones listed – some projects were monitored every six months – have not been included..

3.3 Findings and Conclusions

- Serbia has put in place an institutional and legal framework for combating corruption, where the country's first anti-corruption strategy included an action plan, and where the recently established Anti-Corruption Agency has received basic funding, premises and staff, and with an EU funded project providing technical assistance and financial support.
- The country has a range of public accountability actors that should play important roles in public oversight, in particular the ACA and Parliamentary committees but also the SAI, the Budgetary Inspectorate in the Ministry of Finance, the Ombudsman's office, the Commissioner for Information of Public Importance and Personal Protection, the Public Procurement Office. While these actors evidently work quite well together, it is largely the SAI and Budgetary Inspectorate

that have enforcement powers, leaving the others largely as advocacy⁸⁵, preventative and public information bodies.

- Corruption is seen as serious and pervasive in Serbia⁸⁶. The data on public procurement points to how the political system appears to use public funds to secure benefits to linked-in businesses, and through the decentralised system ensures that the benefits of public corruption are widespread and thus generate loyalty throughout large parts of the public sector. The issue is hence not linked to a few individuals at the apex of the political system but rather supports the view of systemic and deeply embedded corruption.
- The need for continued support to the country's anti-corruption efforts is clear, but the challenge is greater *political* support from national authorities. Given that there is considerable agreement that important parts of the political system are direct beneficiaries of corrupt practices, external support for addressing corruption needs to take this into account.

4. Fight Against Organised Crime

Serbia adopted a national strategy for the fight against organised crime in March 2009 while the Law on Organisation and Competences of the State Institutions in Suppressing Organised Crime was adopted in August 2009. This gave broader competencies to the Specialised Prosecutor for Organised Crime, along with the Law on Enforcement of Prison Sanctions for Criminal Offences of Organised Crime. Changes to the Criminal Code, adopted also in August 2009, introduced new criminal offences, in particular in the area of financial crime.

The 2011 PR notes that Serbia has established a good framework for police cooperation and the fight against organised crime. The new Criminal Procedure Code (CPC) adopted in September 2011 profoundly changed criminal proceedings by transferring the leading role in criminal investigations from the investigating judge to the prosecution service and introducing an adversarial system. It provides law enforcement bodies with relevant tools for investigating organised crime, including special investigative measures. As preparatory work for its implementation has been slow, notably on building the expertise and infrastructure for the prosecution service, it will, in a first stage, only be applied to proceedings carried out by the special prosecutors for organised crime and for war crimes, before extending it to the whole system. There are concerns over insufficient procedural safeguards in the new Code.

The law on Police was amended in December 2011 to better define police cooperation at operative level through joint actions, teams and exchange of liaison officers. Measures have been taken to improve the methodology and standards of police work, including an information booklet on anti-

⁸⁵ The ACA, for example, has as one of its areas of responsibility to monitor compliance with conflict of interest issues in the public sector. If a senior civil servant is found to be in breach of the rules, the ACA notifies the office in question and informs about the situation and how serious the ACA believes it to be, and can exercise considerable moral suasion and pressure, but cannot directly impose sanctions itself. According to the ACA, they see that their views and suggestions are for the most part listened to and acted on.

⁸⁶ In the 2012 Transparency International's *Corruption Perceptions Index*, Bosnia and Herzegovina, Croatia and FYR Macedonia score better than Serbia, Kosovo and Albania much worse. There is no rating for Montenegro.

corruption for police officers. Cooperation between relevant agencies has improved within the country, in the region and internationally.

Capacity to carry out complex, in particular financial, investigations needs to be built up. Specialised services, in particular the unit for witness protection, still lack sufficient staff, resources and adequate premises. Cooperation and information flows between law enforcement agencies need to be improved. Statistical data need to be harmonised and a centralised criminal intelligence system still remains to be established.

Some progress was achieved in the fight against money laundering. The number of identified cases of tax fraud and of final convictions for money laundering offences has increased. However, the staff and analytical capacity of the Administration for the Prevention of Money Laundering need to be further strengthened. The number of suspicious transactions identified remains low and reporting, especially from outside the banking sector, needs to develop. Law enforcement and judicial authorities still lack expertise to handle money laundering cases.

Overall, there has been solid progress in the legal framework for the fight against organised crime. Tangible results remain rare, however, though improved inter-agency coordination and regional and international cooperation has led to some improvements. But organised crime remains a serious concern in Serbia, especially regarding money laundering and drug smuggling, and there is a need for the country to improve investigations and ensure convictions in the cases that can be proven.

4.1 Assistance Provided

Through the Project against Economic Crime in the Republic of Serbia (PACO Serbia) which was funded by the EU and implemented by the Council of Europe in 2006–2008 progress has been achieved in improving capacities to fight economic crime in general, including money laundering, terrorist financing and cybercrime. In this regards the Communication from the Commission to the Council and the European Parliament on Enlargement Strategy and Main Challenges 2008-2009⁸⁷ of 5 November 2008 states that “*the legal framework and cooperation between banks and financial institutions on money laundering, have improved.*”

A number of draft laws were prepared with the assistance of PACO Serbia: (i) the Law on Managing Seized Assets (Adopted); (ii) the Law on Agency for the Prevention of the Corruption (Adopted); (iii) the Law on Organisation and Authorities of the State Bodies in Combating Organised Crime (Pending for adoption); (iv) the Law on Liability of Legal Persons (Adopted); (v) the Law on the Ratification of the Cybercrime Convention and its Additional Protocol (Adopted); and (vi) the Law on Prevention of Money Laundering and Terrorism Financing (Adopted).

In addition to the above, the National Strategy for the Prevention of Money Laundering and Financing Terrorism drafted with the assistance of the PACO Serbia project was adopted in September 2008 and provides for political guidance in the further development of the AML/CTF system. However, significant further action is required and the Serbia Progress Report 2008⁸⁸ the EC concludes that “*Preparations in the area of money laundering are still at an early stage. Money*

⁸⁷ http://www.europa.org.yu/upload/documents/key_documents/2008/strategy_paper_incl_country_conclu_en%202008.pdf

⁸⁸ http://www.europa.org.yu/upload/documents/key_documents/2008/serbia_progress_report_en%202008.pdf

laundering continues to be a serious problem in Serbia”. In particular, it highlights the need to adopt the legislation regarding the prevention of money laundering and financing of terrorism and to align legislation with the Council directive on prevention of the use of the financial system for the purpose of money laundering and financing terrorism. The Communication of 5 November 2008 also states that “enforcement capacity to confiscate assets remains low. Investigation resources, inter-agency cooperation and enforcement capacity need to be further improved.”

Table J.6: Projects addressing Organised Crime, IPA 2007-2012

IPA	Project title	EU €O	Description
2009	Directorate for Confiscated Property and Criminal Asset Confiscation	2,500,000	Aim: Improve institutional capacity and efficient functioning of the Seized Property Management Directorate of the Ministry of Justice, as well as other key institutions involved in the discovery, expropriation, confiscation, management and seizure of property acquired in criminal activity in Serbia.
2010	Project against money laundering	2,000,000	Overall objective of the project is prevention and control of money laundering and terrorist financing in Serbia in accordance with the European and other international standards and best practices. The purpose of the project is to enhance capacities of the key institutions to prevent and control money laundering, economic and financial crime and strengthen the interagency cooperation.

Two IPA funded projects over the 2009 and 2010 programs totalling € 4.5 million are listed. While it is only in the latter part of the IPA period that there are projects that primarily address organised crime and money laundering, there have been activities in these fields funded over more general projects earlier as well.

4.2 Other Relevant Activities

Support to Prosecutors' Network in South Eastern Europe, PROSECO (2008–2010) was to strengthen the capacities of the Western Balkans states to develop and implement judiciary co-operation against serious crime. This was to be based on the EU acquis and other European and international standards and practices. In particular, the project focused on strengthening the legislation and institutional capacities of General Prosecutors' Offices of South Eastern Europe in view of a more effective co-operation against serious crime.

Under the IPA 2008 program, *Harmonization of the Serbian Customs Enforcement Division* with the standards, organization and operational methodology of EU enforcement agencies, was approved. This project was to support and build the capacity of the Customs Administration by providing and installing X-ray systems and other necessary equipment in order to improve the efficiency and effectiveness of border control systems, including for reducing cross-border smuggling.

Within the IPA 2009 package, the Ministry of Justice is implementing the *Capacity building of the Directorate for Confiscated Property and Improving the system of Criminal Asset Confiscation*. Amongst other activities, the project was to design curriculum and deliver multidisciplinary training for the staff in the Directorate, the Financial Investigation Unit (FIU) and other state institutions relevant in seizure of criminal assets.

Under Multi-beneficiary IPA 2008, *Fight against Organised Crime, in particular illicit drug trafficking, and the prevention of terrorism* were financed. The purposes of the project were to (i) improve

cross-border intelligence collection systems and exchange, criminal intelligence capacities, including financial intelligence units, relating to organised crime, in particular financial crime and illicit drug trafficking and counter-terrorism; (ii) enhance and further develop more effective strategies and instruments for freezing and confiscation of terrorist assets and organised crime-related proceeds; (iii) strengthen and consolidate International Law Enforcement Coordination Units (ILECUs).

Under the Multi-beneficiary IPA Program 2010, *Regional Cooperation in Criminal Justice: Strengthening capacities in the fight against cybercrime* was financed. The project is to strengthen cross-border and international operational cooperation between law enforcement and judicial authorities of the IPA Beneficiaries and EU Member States in investigations or prosecutions of cybercrime. This project should provide training on analysis and investigation of criminal proceeds flows on the internet involving the IPA Beneficiaries, organise workshops on financial investigation involving information and communication technologies and develop cooperation procedures/agreements between financial investigators, FIU and the private sector including the financial sector. These activities will complement a wider approach in suppression of money laundering and terrorism financing envisaged in project proposed in this project fiche.

4.3 Results Achieved

From the statements received from a number of sources, it appears that steps taken to reduce organised crime has led to improvements, with cross-border smuggling reduced and a number of organised crime networks dismantled or at least weakened and/or pushed out of Serbia.

A number of the multi-beneficiary projects had separate Serbia components that have been monitored through the ROM system. Including these, there are a total of seven ROM reports that address the fight against organised crime in Serbia.

Table J.7: ROM Reports on Organised Crime Projects

Project title	Date	RQD	EID	ED	ID	PS
Establishment of International Law Enforcement Co-ordination Units (ILECUs)	2009	C	B	B	B	B
Establishment of International Law Enforcement Co-ordination Units (ILECUs)	2010	B	B	B	B	B
Project against money laundering and terrorist financing in Serbia (MOLI)	2011	A	A	A	A	B
Implementation of Integrated Border Management (IBM)	2010	B	B	B	A	B
Implementation of Integrated Border Management (IBM)	2012	B	B	B	C	C
Capacity building for Directorate for Management of Seized and Confiscated Assets	2010	B	B	B	B	B
Capacity building for Directorate for Management of Seized and Confiscated Assets	2012	B	A	B	A	B

Ratings categories: "RQD": relevance and quality of design; "EID": efficiency of implementation to date; "ED": effectiveness to date; "ID": impact to date; "PS": potential sustainability. **NOTE:** Some ROM reports that took place between the ones listed – some projects were monitored every six months – have not been included.

The one project that was a purely national project, the MOLI project, is the one that has received the most positive ratings. One reason is, when comparing to the multi-beneficiary projects, that this is a simpler project to design, implement and monitor. The level of political risk – lack of high-level support – is also seen as much lower than for many other activities, in large part because the project is seen as a fairly technical one providing basic organisational and skills development. The one concern is ensuring continued local funding, leading to the “B” for possible Sustainability.

The ILECUS project has overall received “B”s and thus seen as quite satisfactory in its design, implementation and results. The first “C” on the design of the project seems to have been more related to formal issues concerning the structure of the results design but where a possible lack of more broad-based ownership by involved stakeholders was a real issue. The relevance and overall structure of the project was otherwise seen as appropriate and realistic. By the time of the follow-on monitoring visit, local stakeholders had in fact shown stronger ownership and appropriate management arrangements had been put in place – without this strengthening the expected longer-term results, however. This seems somewhat odd as the trans-border coordination is focusing a lot exactly on organised crime, so if the ownership had improved, one would have expected enhanced efficiency and effectiveness. Overall, however, the project is clearly seen to contribute positively to the fight against organised crime.

The IBM ROM reports do not address the issues of trans-border crime very clearly since it covers all border control issues: phytosanitary control, passport control etc. It is also noteworthy that the project contributed to updating the strategy to which it was to contribute since it was identified in 2005, tendered in 2008, contract signed in September 2009 and completed in February 2011....

Support to the Directorate for Management of Seized and Confiscated Assets is seen to be delivering well against planned results, and in fact improving over time with two “A”s in the second monitoring that took place nearly two years after the first one. One thing is that implementation has run smoothly, but the more important result is that likely impact is seen to have improved, based on data of Directorate performance: the number of financial investigations increased from 18 in 2009 to 119 in 2010, and 66 in the first six months of 2012. Temporary seized vehicles increased from 5 in 2009, to 68 in 2010 and 141 in 2011. The weakness of the judiciary is, however, reflected in the volume of permanently seized assets, where of 122 temporary seized real estate units in 2009/10, only one was permanently seized in 2010, six in 2011 and five so far in 2012.

Overall, projects addressing organised crime appear to be delivering enhanced results over time.

4.4 Findings and Conclusions

- As with judicial reform and fight against corruption, Serbia has put in place largely appropriate legal and institutional frameworks for fighting organised crime.
- The more complex inter-organisational cooperation required for addressing problems like money laundering are also to a large extent formally in place, though the functioning, level of sophistication and the number of cases uncovered can be improved
- Cross-border collaboration is particularly important for fighting organised crime. Serbia has actively participated in multi-beneficiary projects and member of various regional and pan-European bodies like GRECO, Moneyval, Egmont group, Europol and Eurojust.
- The fight against organised crime has clearly intensified, with successes recorded in terms of trans-border smuggling, the dismantling or weakening of some organised crime groups (though some seem largely to have fled across a border and are active from abroad). At the same time, organised crime has become more sophisticated and better resourced, and better at shielding its activities and protecting its assets from confiscation.

5. Looking Ahead

When looking at how EU resources for Rule of Law can be better programmed over the coming IPA II period, the team has relied on three sources of information:

- The findings from the performance of current and recent financing along the three issues of judicial reform, fight against corruption and organised crime, as laid out in sections 2-4;
- Other studies that look at how EU funding has been applied in the field of Rule of Law (section 5.1);
- Interviews with informants from the public sector, covering different vantage points: policy making (ministry), implementation (directorate, agency, council) and the courts system. Non-state actors included business people, civil society watch-dog and staff from bilateral, multilateral as well as EU Delegation offices (see Annex A). These conversations are used in section 5.2.

Together these information sources have been used to identify those factors that the team believes could most likely generate positive results from future IPA funding in Serbia.

5.1 Relevant Studies and Evaluations

There are four studies that look at EU support that cover Rule of Law issues in Serbia, of which two are interlinked reports from the Council of Europe's Group of States against Corruption (GRECO):

- GRECO third round evaluation reports – studies on Incriminations, and Transparency of Party Funding (both October 2010);
- Retrospective evaluation of CARDS programs in Serbia (September 2009);
- Interim/strategic evaluation of EU IPA pre-accession assistance to Serbia (Mann and Kacapor 2011).
- SIGMA report for Assessment of Serbia 2010 Democracy and the Rule of Law.

5.1.1 GRECO Reports

The State Union of Serbia and Montenegro joined GRECO in January 2003, and with the dissolution of this in 2006, the Republic of Serbia became the successor state member of GRECO. The first and second round evaluation reports were approved at GRECO's plenary meeting in June 2006, and the third evaluation round was launched in January 2007. It was to deal with two themes: (i) incriminations, and (ii) funding of political parties.

The report on Incriminations notes that the new legislation is largely in line with European standards, addresses active and passive bribery, direct and indirect benefits, intentionality, bribery of officials, trading in influence, the issues of international organisations, jurisdictions, dual criminality, statute of limitations and other concerns raised by GRECO. The final conclusions are that *“the Criminal Code of Serbia is largely in line with the Criminal Law Convention on Corruption”* (GRECO theme I p. 21). But while the criminal legislation is seen to provide a sound basis for the investigation, prosecution and adjudication of corruption offences, its effectiveness in practice needs to be increased. The report points to the statistics regarding complaints, number of indictments and actual convictions with regards to corruption cases in Serbia during the nine-year period 2000-2008 as the basis for the concerns:

The report thus notes that *“More must be done to secure convictions not only for petty bribery, but also high-level corruption in the public sector. The authorities also need to remain alert to related problems ... such as trading in the influence and corruption in the private sector”* (ibid p. 21), but goes on to note that the authorities seem to be addressing the issues with the reinforcement of anti-corruption structures within law enforcement agencies and foreseen amendments to the Criminal Procedure Code.

Table J.8: Statistics on Corruption Cases in Serbia, 2000-2008

	2000	2001	2002	2003	2004	2005	2006	2007	2008
Complaints									
Accepting bribe	69	108	146	111	75	82	97	129	91
Giving bribe	78	53	95	59	37	55	43	109	102
Indictments									
Accepting bribe	46	44	55	30	39	29	43	38	33
Giving bribe	34	48	45	31	39	36	45	36	35
Convictions									
Accepting bribe	31	38	47	22	26	23	38	31	23
Giving bribe	29	34	41	20	32	34	40	29	31

Source: GRECO 2010 evaluation, theme I, p. 7

The report on the financing of political parties notes that at the time of the report there were 73 legally registered political parties, of which 42 represented various national minorities (GRECO theme II, p. 4). The report reviews the laws, the rules regarding public and private funding, campaign financing, collection and expenditure limits, reporting and accounting/auditing requirements, sanctions, transparency, supervision, and sanctions in cases of breach of laws and regulations.

The new Law on Political Parties of 2009 is linked with a series of more specific laws (Financing of Political Parties; Election of the President of the Republic of Serbia; Election of Representatives to the National Assembly; Local Elections; and regulations and decisions by the Republic Electoral Commission). Together these are seen as constituting an important step forward for Serbia. What is once again missing is the implementation, where in particular the supervising aspects appeared the weakest. The report notes that most informants were convinced that political parties only report a fraction of actual funding and expenditures, and that in particular the costs of political campaigns are much greater than the reported numbers indicate. This is in part due to weaknesses in the legislation that is not clear about time periods, what needs to be reported, etc., and the report notes that the authorities have established a task force to identify legal remedies.

The report ends by making recommendations regarding key tasks to address, and where in particular more effective supervision during critical phases in the political cycle needs to be strengthened to ensure that problems are rapidly uncovered and enforcement powers are in place to quickly ensure compliance with laws and regulations.

The main conclusions from the two reports are thus:

- The legal foundations are largely in place,
- There is a need to strengthen the legislation in particular places, largely to make the rules clearer and to close loopholes.
- Implementation of the more challenging parts of the legislation is also an issue, where petty corruption is being prosecuted but there is the feeling that large-scale malfeasance, whether with regards to public management or funding of political parties, largely goes untouched.

Following the GRECO recommendations in 2011 Serbia has adopted the Law on Financing Political Activities and the ACA become the institution responsible for implementation of the Law.

5.1.2 CARDS Evaluation

The evaluation covered the period 2000-2006, looking in particular at three fields where one was Justice and Integrated Border Management (Particip 2009).

Of the € 1.15 billion disbursed during these seven years, about 8% went to the Justice and Border Management sub-field (the energy sector got 31%, local and municipal government 10%, economic growth and enterprise development 8%).

41% of the funds were spent on technical assistance (TA) and twinning, 31% went to infrastructure and 21% for supplies.

When looking at the projects in the judicial sector, the report notes the strong involvement of all stakeholders in areas like curriculum development, draft laws; roundtables with international experts in a number of fields were popular; but overall the limited capacity in the Ministry of Justice meant that it was difficult for the authorities to fully involve and manage the parties well. The lack of good cooperation between important bodies in the public sector led to delays in producing Outputs, though this was also affected by a lack of appropriate backgrounds for some of the experts.

Among the report's ten final recommendations, the five most relevant ones for this study were:

- **Relevance I:** The EC Delegation should stress active coordination with all stakeholders during the design phase and close involvement of local stakeholders in the preparation of project planning documents in order to ensure relevant design, local ownership and to increase prospects of successful implementation. Systematic use of logical frameworks needs to be stressed as it facilitates project management and reduces the risk of implementation delays.
- **Relevance II:** The contractors should be encouraged by ECD to carefully reassess the project context during the inception phase to control compliance between planned versus actual targets and costs as well as a realistic timeframe.
- **Effectiveness:** Relevant expertise of consultants must be ensured by ECD i.e. experts with practical experience and good knowledge on the beneficiary country. It proved to be a success when national stakeholders were involved from the very beginning to evaluate expert background, which ensured delivery of high quality outputs.
- **Sustainability:** Phase-out strategies should routinely be integrated by the ECD in the program planning and concepts for maintaining activities after project end including sufficient capacity building and financial sustainability measures to ensure continuity and ownership.
- **Cross-cutting issues:** The ECD needs to continue the integration of gender aspects during design and implementation (e.g. gender aggregation of logframe indicators, encouraging gender-balanced TA teams, gender-specific impact analysis in project documents).

5.1.3 Interim/Strategic Evaluation of EU IPA Pre-Accession Assistance in Serbia

The Interim/Strategic Evaluation of EU IPA Pre-Accession Assistance to Serbia was part of a larger review process across the region, to look at the experiences with the IPA instrument, and see how IPA programming could be improved during the subsequent period. The report on Serbia has not formally been approved/finalised. This review cannot therefore uncritically take on board the findings and conclusions from that study, although a number of observations are in line with this team's own findings.

Overall, the report is very positive about the systems put in place to program IPA funding, and in particular Serbia's own structures and processes. While at the time of the review (2010), Serbia had formally 71 strategies in place for programming its own and donor resources, it had compiled an overarching Needs Assessment document (NAD) that integrated the objectives and priorities of these various strategies. While not all the programs in the NAD were costed, the report notes that this could be found in the individual strategies, and – very important – were linked in with the budget document so that public funding levels were transparent and in fact guaranteed. The length of the NAD – about 350 pages – makes it a cumbersome document, not very user-friendly, difficult to update and thus risks becoming a drag on more flexible programming. On the other hand, the Development Aid Coordination Unit (DACU) within Serbian European Integration Office (SEIO) uses the NAD as a powerful instrument for improving donor coordination, so in this field the NAD has proven to be highly useful.

As noted in section 2.2, the programming process is considered to be rigorous, prioritisation is being done according to clear criteria that are based on Serbia's priority needs, and that the use of

logframes has improved the quality of project design and that the use of SMART indicators is increasing and improving.

One of the issues that the report raises is the lack of human resources in critical posts of the Serbian system for optimal functioning of the system. This is extended down to line ministries in terms of lack of knowledge/training in aspects of IPA programming (though overall the report is very positive also at this level). Another concern raised is that monitoring is neither quick enough nor being used sufficiently for managing resources: the use of Results Oriented Monitoring (ROM) reports should be used earlier in the implementation cycle to catch possible problems as early as possible, but the ROM report results also need to be communicated faster to decision makers so that weaknesses identified can be discussed and addressed. While the expected Sustainability and Impact is seen as very good (only 5 of the 45 projects looked at showed serious signs of weakness in these fields), the finding was that these issues could have been identified fairly early on, and the projects either rejected at that stage (the report claims there were clear signs that the authorities did not intend to continue some of these once external funding had ended, for example), or strengthened through improved design.

The report notes the importance of local ownership, and that the danger of using external technical assistance for improving project design may be that the local stakeholders do not have the same level of commitment and even ability to implement what has been designed. But overall the report finds that stakeholder engagement in the programming process has improved and that in particular in the eight fields where Serbia has begun more broad-based quasi-sector programming, inter-sector working groups have been important for selecting priorities and coming up with key design elements. Of the eight fields, Judiciary was at the time seen as the one that had come the farthest in this respect, though the Partners' Forum in this sector has not functioned these last two years. The multi-donor trust fund for the legal sector established by the World Bank and which has funding from eight donors is pointed to by several as the most important pooling mechanism in place in Serbia.

The report ends up with recommendations along six programming dimensions, and the most relevant one for this report are provided below (Mann and Kacapor 2011, pp. 58-59):

Programming and Intervention logic

- Any new MIPD should be more focused... The sectoral structure already proposed by the EU delegation can be used. Indicators should show a precise and measurable vision of expected results (i.e. be SMART).
- The proposal to adopt MIPD for a fixed duration of three years, with a minimal annual update ... (i.e. a three year program) should be considered.
- The rush to meet deadlines should not manipulate building the quality of project proposals in terms of the lack of SMART indicators. There is a visible rush to meet deadlines which contributes to the strength of programming, but may impact the quality of proposals.
- Programming of assistance should refer to and incorporate priorities ... outlined in the (NAD) ... as such the programming will respond to the needs of the country.
- Simplification of the needs assessment process and the adoption of a sector wide approach will allow basic needs to be established earlier

Administrative Capacity

- The issue of staffing to run the Decentralised Implementation System should be addressed at the highest level in order to ensure, not only that accreditation of the system is achieved according to the DIS Roadmap, but so that a gradual withdrawal of technical assistance can be achieved and that ownership can be transferred to the beneficiary. This is extremely important.

Monitoring capacity

- All projects should be monitored within 2 months of starting, in order that the log-frame may be realigned (if necessary) and that issues regarding achieving objectives and sustainability may be addressed as early as possible.

Sectoral approach

- The transition to a sector wide approach can start with the three agreed pilot sectors, using the framework of existing strategies and the fact that inter-sector working groups are more or less already established and that programming has addressed these groups.
- A full sectoral strategy should be developed for each sector using full stakeholder involvement, but as a short-term measure, short interim strategies consisting simply of log frames can be constructed for each proposed sector

Efficiency and Effectiveness

- Decrease in the number of projects and increase in their financial amount ... and, in the case of sector based approach, using the possibility of contributions to sector related funds, is likely to improve effectiveness and efficiency of assistance.
- Use of monitoring reports to provide meaningful insights and comments into implementation of ongoing assistance will positively influence effectiveness and efficiency of interventions.

Impact and sustainability

- Establishing a program for ex-post monitoring of IPA interventions to be conducted for projects belonging to sectors of high relevance for future programming and carrying it out as soon as a sufficient number of projects from the IPA National Programs 2007 and 2008 are over would be desirable.
- Systematically devoting enough time and efforts in securing not only the consent but also the firm commitment of all needed stakeholders of any planned intervention and in formalizing this commitment before the project start is an imperative in the complex governmental and administrative framework Serbia.

5.1.4 SIGMA Report, Assessment of Serbia 2010 Democracy and Rule of Law

The study expresses a serious concern in regard to the extent to which the public governance system adequately respects the Rule of Law (i.e. a set of principles that require a separation of powers between the judicial, executive and legislative branches of government, compliance with the law by government, individuals and economic operators, the proper functioning of the judiciary and the consistent application of fair procedures by the administration. The poor quality of legislation has

also been perceived as a remaining common problem. Major reasons for insufficient quality of legislation include: deficient law-drafting capacity in ministries and administrative bodies; inadequate consultation with regulated communities; excessive ambitions for the legislative agenda; poor translations of European laws and adoption of laws drafted by international consultants from alien contexts, resulting in a system rich in written laws but poor in laws that effectively regulate in accordance with their intended purpose; inadequate attention to implementation issues during drafting; constrained potential for parliament to scrutinize government proposals adequately. Implementation of laws remains a problem. This is exacerbated because the social and political role of the law is not fully understood. Frequently, public sector institutions do not hesitate to disregard legal provisions or binding procedures as they see fit. This problem seems to be a matter of legal culture, which needs to gradually evolve through a long-term process. There is little separation between the executive and legislative branches of the state, with the former dominating the latter. Compliance with the law by the government is not assured. Individuals do not have full confidence in the legal system.

5.2 IPA Assistance: Lessons Learned

When reviewing the views of informants regarding how IPA funds could be programmed, these can be grouped into four categories: general framework conditions for programming in Serbia, and then three dimensions of the activity cycle: the programming of the activities; the implementation; and how results are monitored, reported and used.

5.2.1 General Framework Conditions for Programming Rule of Law Assistance

Serbia is a unitary state with (relatively) strong public sector programming procedures and capacities. Unlike some of its neighbours, Serbia has a state structure that is quite centralised and a public administration system that both has the basic capacity to program and monitor intended activities and is guided by political decision making processes and instruments (such as the NAD). Serbia also has come far in putting in place the prerequisites for Decentralised Implementation System (DIS) which will give it much more control over EU financial support.

- Serbia has the basic instruments and capacities necessary to manage programming of IPA resources.

Sector programming for Rule of Law in Serbia is viable but not quite yet. Serbia has developed a large number of strategic programs with costed interventions that are derived from fairly broad-based consultative processes where key stakeholders are being heard⁸⁹. The strategies are based on the country's larger planning and budgeting systems so key programs are included in the public budget and funding for these priority activities can be identified there and degree of likely financial sustainability can thus be verified. Needs and gap analyses are at least in principle being done to identify uncovered priorities, and DACU appears to have sufficient overview of foreign assistance to ensure acceptable aid management. In addition to an aid database, pooling mechanisms are being used, where the best known example is the World Bank administered MDTF for the judiciary sector,

⁸⁹ As has been noted above, not all stakeholders feel equally included, so clearly there are further steps that can be taken. But the *principle* of a more consultative programming process seems to be in place, and actors are much more aware of what is involved and are gaining experience in contributing and participating.

which reflects that this is the sector that has come the farthest in preparing for a sector wide approach to programming (SWAp).

- Serbia has the prerequisites for successful sector wide programming largely in place: a planning and budgeting system that can allow for coherent resource allocations according to political priorities; sector programming based on participatory processes and needs and gap assessments; an aid coordination system that captures major financial assistance; and sector-wide working groups in a number of sectors including the judiciary.
- While basic structures are in place, actual implementation is lagging in key areas like genuine inclusion of non-state actors; information on needs and resources is incomplete; and better collaboration across organisational boundaries (ministries, external directorates, independent judiciary, civil society oversight actors etc.) is necessary for the system to function as desired.
- Serbia should only move to full sector programming approach if all key stakeholders feel comfortable that the process is going to deliver superior results. The view of a number of stakeholders is that some of the key public finance management (PFM) instruments are not yet sufficiently robust and transparent to provide a satisfactory platform for a true sector program, that some of the policy dialogue across institutional boundaries has still not reached a level that sector programming requires, and that Serbia for the immediate programming of IPA II should instead focus on a few key issues (like internal management and capacity building of the judiciary – see the first bullet point under 6.2.2) and build long-term programs with comprehensive SMART performance measures around these, but that the country may have the pre-requisites for full sector programming in place by the mid-term point of IPA II.

State influence over judiciary is a serious concern. The need to reform the judiciary after the Milošević era led to a vetting and rehiring process to strengthen the professionalism and independence of the prosecutorial and judicial services. The process was overseen by the recently established High Judicial Council and State Prosecutorial Council. This process was criticised heavily by a number of actors, and was recently overturned by the Constitutional Court. A key concern has been the interference by parts of the political establishment to put in place a more compliant court system that would not challenge what is seen as deeply embedded corruption including at the highest political levels. The systematic and continuous attempts by political leaders to influence this vital dimension of Rule of Law is a serious matter. While the EU is obviously aware of this and refers to it in its Progress Reports, it means this issue needs to remain at the top of the EU's worries when it comes to the further strengthening of Rule of Law in Serbia.

- Continued strengthening of the independence and quality of the judiciary should be supported by the EU, with the understanding that attempts at undermining this independence must have clear consequences in terms of the larger support from the EU.

The state prosecutorial and accountability system must be strengthened. While the independence of the judiciary is important, this issue must be seen in the larger context of strengthening public sector accountability in general. While the formal institutional set-up for strengthening the rule of law appears appropriate, a number of key accountability actors have limited investigative capacities and enforcement powers, including the ACA, the Ombudsman's Office, the Public Procurement Office, etc. More importantly, key prosecutorial and accountability

bodies with real power – in particular the police and prosecutors, but also actors like Parliamentary oversight committees and the Budgetary Inspectorate/Ministry of Finance are seen not to use their mandated powers to the fullest extent possible. While there may be a number of reasons why some actors are not performing their roles as hoped for, it is clear that the actual functioning of the public accountability system is weak and must be strengthened and become more operational if on-the-ground fight against corruption and organised crime is to succeed.

- The EU may want to produce a systematic mapping of key accountability actors in the public sector, their formal powers and actual performance as a basis for a structured program to strengthen overall performance and accountability in the public sector⁹⁰. This is not necessarily a component in a Rule of Law program but perhaps in a larger Public Administration Reform program – but wherever it fits in, it needs to be linked in with and supportive of Rule of Law programming.

Civil society oversight actors exist but require stronger voice. Civil society organisations (CSOs) that monitor the corruption, organised crime and judiciary performance situations exist but their capacities are limited and the political space for action often constrained. Access to EU funding is seen as costly, highly uncertain, and limited to specific and time-constrained projects rather than to longer-term capacity building programmatic fields. They require own funding (which is almost impossible for watch-dog/advocacy groups to mobilize locally), and have no guarantee of continuity and thus become high-risk when it comes to larger projects: a number of CSOs hire staff, train them, and then see them leave when the particular project ends and further funding turns out not to be available. There is also a limited range of actors that tend to be included in RoL projects, so it is difficult to build “accountability coalitions” that may include investigative journalism, public whistle-blowing platforms/web-sites and social media/ interactive IT arenas, professional associations, unions and other interest groups.

- The EU should assess the structure and its procedures for supporting CSOs that play important accountability functions, to ensure that partners for promoting RoL have the predictable resources and acceptable space necessary for playing long-term roles.

Lack of political will remains the key challenge. According to national and international observers, it is clear that a number of public institutions do not wish to strengthen their Rule of Law roles and capacities. This is in large part because political decision makers at the top do not want this to happen though there may also be internal reasons why some bodies are not playing out their roles as mandated and expected.

- The EU should review carefully which options exist for supporting a strengthening of political will to push the Rule of Law agenda across the political spectrum and public administration. Instruments like power mapping, political economy analyses, local stakeholder forums may uncover instruments and approaches that can contribute to furthering this critical agenda.

⁹⁰ Whether this necessarily will be funded by the EU, or as part of the EU’s Rule of Law program or under more general public administration reform headings is a different matter. The point is that sustainable improvements in RoL is not likely to happen unless and until public accountability capacities and systems are strengthened and their performance significantly improved in line with European standards.

Public sector economic actors represent major challenges. Large publicly-owned assets such as power companies and other utilities and firms in fields like medicine channel huge amounts of public funds. Some of these are not as transparent and accountable as they ought to be. These are seen to constitute sources of power and economic interest linkages that may constitute major barriers to non-corrupt transactions.

- The EU should develop a strategy for reducing the distortionary effects of non-transparent actors that weaken the effects of interventions addressing corrupt acts and behaviour.

5.2.2 Programming Financial Assistance

Need for predictable yet flexible long-term funding. Short- to medium-term project funding for addressing organisational and institutional development has been frustrating so the move in IPA II towards a period-long funding horizon is welcome. The longer-term horizon is also important so that roles *within* and *to* other organisations “set” and are properly implemented. Predictable funding also provides a “buffer” against political pressures because continued EU support means not only funds but also political-organisational protection from forces that wish to interfere: the political “signalling” of external support that is solid and visible is often important.

- The general approach suggested for IPA II, for longer-term broad-based funding to larger problem-fields rather than individual projects for particular organisations, is welcomed. Predictability with flexibility – having overarching objectives for a sub-field but with the ability to re-allocate resources among activities as implementation opportunities and blockages appear – is seen as a major step forward.

Internal management and capacity building of judiciary is core field. Most stakeholders seem to agree that the streamlining and restructuring of the court system after the 2009 reform improved the overall structure considerably. But Progress Reports point to a number of remaining shortcomings regarding the efficient and effective functioning of the system (the last paragraph in section 3). There is hence a need for continuous strengthening of capacities and performance of the court system, prosecutorial services and key bodies such as the HJC and SPC, the Judiciary Academy as well as the Ministry of Justice itself, in part to ensure that the standard court case flow through the system in a manner that builds trust and confidence in the country’s judicial system, but also to ensure that it is able to allocate the required skills and resources to address the more challenging cases related to high-level corruption and sophisticated organised crime.

- The EU should have a core Rule of Law component that addresses the efficient and effective functioning of the judiciary over the full IPA II period, preferably programmed as a “sub-sector program” though bearing in mind possible conflict of interest concerns when addressing the judiciary versus the executive (Ministry of Justice).
- The support should have clear benchmarks and pay particular attention to the more complex and controversial issues of judiciary performance: threats to independence and quality of the system due to attempts by the political system to interfere; strict adherence to professional criteria for performance; specific attention to how the judiciary handles high-level corruption and organised crime cases.

Continued strengthening of regional and Europe-wide collaboration. A number of actors note the importance of the linkages to regional and pan-European bodies and standards, both as sources of learning and inspiration, but also for standard-setting and support to change processes inside Serbia. The EU membership process is of course accelerating this move towards European standards, so the point made in this connection is that this process needs to go as deeply as possible within the various organisations, to ensure that things like European standards are understood, accepted and implemented – that the “corporate cultures” of Serbian organisations really become aligned with and supportive of the desired standards and practices. This is, among other things, seen as key to reducing political capture and manipulation of the public sector.

- The EU should ensure that cross-border collaboration for learning, peer reviews and adoption and adaptation of regional and European “good practices” and standards is substantial enough to have a long-term impact on organisations’ corporate cultures and performance.

5.2.3 Implementation of Activities

The time from identification to planning to start-up of activities must be cut. One unison criticism of IPA support is the time it takes from a project/program concept has been agreed to, till actual implementation on the ground takes off. While pilot phases and scaling up over time is already being used, there is an overarching sense that the processing inside the EU system is much too cumbersome and that in particular internal vetting and approval between Brussels and Belgrade is non-transparent and not managed aggressively enough – things take too long for what in the end Serbian stakeholders feel are marginal changes/improvements.

- There is a strong wish by a number of Serbian stakeholders for a process review of how IPA funding can be programmed faster.

Procurement of expertise, supplies and equipment must be more flexible. Until Serbia is granted Decentralised Implementation System powers, the procurement of project/program inputs is considered too slow and thus costly in terms of time and management attention. While there is recognition of the procurement corruption danger, the need to follow procedures (and the danger that DIS and thus reliance on own procedures and processes may perhaps not turn out to be the panacea many are hoping for!), the experience that choice of experts has often been determinant for the success (or not) of projects has made a number of Serb institutions want to have a greater say in selection of experts and in specifications of equipment and supplies.

- As with general IPA programming, there is a wish that procurement rules and procedures for IPA II be reviewed with a view to identifying more flexible and locally-driven solutions.

The EU Delegation should have in-house expertise for monitoring and guiding Rule of Law activities. A number of stakeholders expressed frustration at the need for the local Delegation – despite being the largest in the Western Balkans – to have to defer to Brussels on issues that are seen as fairly operational and straight-forward management decisions, and where the knowledge of the specific circumstances on the ground are considered critical for good decisions. The time cost of waiting and the uncertainty it engenders is seen as high. Defining Rule of Law as a priority area with senior technical staff (legal background) that would be trusted by political decision makers in Belgrade and staff in Brussels is seen as useful to smoother implementation of project activities. This should include bridging what some Serb stakeholders see as too wide a gap between the

political/analysis section of the Delegation, and the program implementation part, since there is an impression that some of the overarching political and policy insights are not fully taken on board in the programming and oversight of the particular Rule of Law activities.

- The staffing profile and linkages between different sections of the Delegation should be reviewed with a view to ensuring that Chapters 23 and 24 concerns are addressed as efficiently and effectively by the EU system.

5.2.4 Monitoring and Reporting Results

Monitoring and Results Reporting should move towards sector concerns. While Serbia may not move fully towards a sector programming approach, all activities should be assessed in light of Serbia's requirement that it address the accession criteria and in particular those of chapters 23 and 24. A results framework based on these objectives and then "cascading down" to activity level with a coherent set of SMART indicators should provide the main performance monitoring instrument for Serbia and the EU.

- Serbia and the EU should agree on a more comprehensive results reporting strategy that includes how ROM reporting can fit into a larger focus on systemic (institutional and organisational) improvements, including on complex matters such as "corporate culture" and inter-organisational linkages and performance.
- The monitoring and evaluation strategy should be realistic in identifying the key dimensions (indicators) that should be tracked, how far out the results chain the reporting should go for the various dimensions, how often and with what level of detail reporting should take place, and in principle focus on providing the minimum necessary for good decision making rather than overly ambitious reporting on issues that are not decision-critical: the utility of the produced information should be clear.

The parties should agree to fund innovative approaches to identify results that complement the formal results framework. Many important activity results are often not captured by formal results frameworks, sometimes because they are not foreseen, other times because they are not amenable to simple indicator tracking or other standardised procedures. In a complex and contentious field like Rule of Law, important actors sometimes are not interested in new information and insights being generated and made public, so that standard instruments may not be the most appropriate for this. Setting out to contract small-scale, innovative monitoring and measurement tasks may generate new insights and information that can be of considerable value for understanding what works, what doesn't, and why, in areas where there are actors who are actively working against each other. These can be various kinds of opinion measurements, using social media, web-based "whistle-blower" platforms, focus group discussions, monitoring particular groups that are often marginalised etc.

- Provide a monitoring and results innovation fund that is available for contracting ad hoc small-scale studies, reviews, surveys that can complement the standard results reporting, doing things like identifying impacts on particular groups (business community, vulnerable groups, minorities, women), testing out and strengthening participatory monitoring instruments, creating new feedback loops or facilitated dialogues with decision makers etc.

Serbia must commit to continued quality assurance of sector performance. As and when Serbia moves to a Decentralised Implementation System and thus also assumes quality assurance and monitoring responsibilities, continued independent and high-quality reporting on results needs to be agreed to. This should be based on and follow the already-defined results framework. It can use instruments such as frequent peer review missions and/or other approaches to assure both independence, support for continuous learning, local ownership yet critical and honest feed-back on actual results and performance.

- Focus on delivering on documentable continuous improvements in the fields of Rule of Law should be a clear pre-condition for EU support to Serbia.

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