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**TERMS OF REFERENCE**

**IPA 2014**

**Support to Free Legal Professions and Bar Association**

**ANNEX II: TERMS OF REFERENCE**

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# ACRONYMS

ADR Alternative Dispute Resolution

BiH Bosnia and Herzegovina

CLE Contract Law Enforcement Program

CSDP Common Security and Defence Policy

CSSP Berlin Centre for Integrative Mediation

EC European Commission

EROL Effective Rule of Law Program

EU European Union

EULEX European Union Rule of Law Mission in Kosovo

GDP Gross Domestic Product

GIZ Gesellschaft für Internationale Zusammenarbeit

IPA Instrument of Pre-Accession

KBA Kosovo Bar Association

KJC Kosovo Judicial Council

KJI Kosovo Judicial Institute

KPC Kosovo Prosecutors Council

MoJ Ministry of Justice

RoL Rule of Law

SAA Stabilisation and Association Agreement

SEAD Systems for Enforcing Agreements and Decisions

SOP Standard Operating Procedures

ToT Training of Trainers

UN United Nations

UNDP United Nations Development Programme

UNMIK United Nations Interim Administration Mission in Kosovo

UNSC United Nations Security Council

USAID United States Agency for International Development

# BACKGROUND INFORMATION

## Partner country

The beneficiary country is Kosovo[[1]](#footnote-1).

## Contracting Authority

The Contracting Authority is the European Union (EU), represented by the EU Office in Kosovo.

## Country background

Kosovo is situated in the Western Balkans with a territory over 10.000 km² and a population estimated between 2.0 and 2.3 million. The majority of population is Albanian (90%) with the Serb community representing the largest non-majority community (5% to 7%). The rest of the population consists of Bosniaks, Turkish, Gorani, Roma, Ashkali and Egyptians and smaller Croat and Montenegrin minorities.

After a decade of repression under the Milosevic's regime followed by NATO’s military intervention, on 10 June 1999 the United Nations Security Council (UNSC) passed Resolution 1244, placing Kosovo under the United Nations (UN) administration and establishing the United Nations Interim Administration Mission in Kosovo (UNMIK). After a series of internationally mediated but inconclusive status talks between Serbia and Kosovo, the Assembly of Kosovo unilaterally declared the independence on 17 February 2008.

As of August 2015, Kosovo’s independence was recognised by 111 countries but Kosovo is not a member of UN and Resolution 1244 continues to be in force. UNMIK maintains a small presence and reports to the Secretary General of UN on the overall situation in Kosovo on quarterly basis. The EU maintains a large presence in Kosovo including the EU Office in Kosovo and EU Rule of Law Mission in Kosovo (EULEX). EULEX is the largest civilian mission ever launched under Common Security and Defence Policy (CSDP). The central aim of the Mission is to assist and support the Kosovo authorities in the rule of law (RoL) area, specifically in the police, judiciary and customs areas. It is a technical mission with a mandate to monitor, mentor and advise whilst retaining a number of limited executive powers.

Kosovo's economy is small and Kosovo is relatively poor with Gross Domestic Product (GDP) per capita of about EUR 3000 and remains well below standards in other Western Balkan countries. The main characteristic of the economy of Kosovo is relatively narrow productive base, high dependence on imports and a very high level of inflows from a specific source other than exports, i.e. remittances from the diaspora and donor assistance. Kosovo joined the International Monetary Fund (IMF) and World Bank in 2009. Kosovo became a member of European Bank for Reconstruction and Development (EBRD) in 2012 and has signed a Framework Agreement with European Investment Bank (EIB) in 2013. Kosovo is a member of the Central European Free Trade Agreement (CEFTA). In 2014 growth in Kosovo slowed to an estimated 2.7 percent of GDP, from 3.4 percent the previous year. However, it is estimated that the unregistered economy is of a considerable size. Foreign investment is still relatively low, partially hindered by regular power cuts. In general, Kosovo's macro-economic policies over the last few years can be characterised as stable.

As the rest of the Western Balkan region, Kosovo enjoys a European (integration) perspective. The European Commission (EC) plays a key role in implementing the enlargement policy by deploying all its tools under the Stabilisation and Association Process Dialogue (SAPD), such as sectorial dialogues and regular reporting. The Commission provides sound policy advice and guidance to Kosovo's reform efforts. This is backed up by substantial financial assistance, delivered via the Instrument of Pre-Accession (IPA) (former CARDS), with a total of nearly EUR 2 billion to date. The negotiations of the Stabilisation and Association Agreement (SAA) between the EU and Kosovo were successfully completed in May 2014. The SAA is a comprehensive agreement that provides a framework for political dialogue and covers co-operation in a wide variety of sectors, such as justice, trade, education, employment, energy, environment and a range of other policy areas. Once in force, the SAA will be the first contractual relation between the EU and Kosovo.

## Current situation in the sector

Kosovo’s legal framework in the area of free legal professions concerns respective pieces of legislation regulating respective professions. Specifically, there is currently a law on the bar, the state advocate, the bar exam, notary, mediation, enforcement procedure and a number of related sub-legal acts. The laws on mediation, notary and bar are under a reviewing process.

To date, through donor support Ministry of Justice (MoJ) has established a number of new institutes, such as mediators, notaries, private bailiffs and bankruptcy administrators, including related managing bodies such as the Mediation Commission, the Chamber of Notary and the Chamber of Private Enforcement Agents.

Since 2012 the *Department for Free Professions* is a new department at MoJ in charge of ensuring a proper functioning, monitoring and oversight of free legal professions through carrying out random inspections and providing the necessary support and guidance, including adoption of the secondary legislation. The Department for Free Professions has four staff members and is divided into two divisions: 1) Division on Notary and Private Enforcement; and 2) Division on Jurisprudence, Mediation and Bankruptcy Administrators. The recruitment of two additional staff members is still ongoing. It is the responsibility of the MoJ to ensure that such professions are open to highly qualified and well-trained legal professionals and to manage the licensing process according to law and in line with EU standards and best practices. MoJ organizes and administers the Bar Examinations and it has increased efficiency in terms of procedures for entering the Bar Examination by adopting new legislation and through establishing the Department for Free Legal Professions. Currently, a new manual, as the main reference book for the Bar Exam, is being developed.

On the other hand, as provided in the Law on Notary of 2008, “the *Notary* service is judicial and public service that aims to protect legal interests of natural and legal persons in compliance with the Constitution and laws of Kosovo.” Notaries started to operate in Kosovo since 2012 and, as of today, there are 74 notaries operating in almost all municipalities Kosovo wide. In the same year, the Chamber of Notary of Kosovo was established which became a full member of the International Union of Notaries since 2013. The Chamber of Notary has two administrative staff who have received no trainings so far. However, there are five specialized Notary Training of Trainers (ToT) trainers, which need further trainings to enhance their capacities. A draft Law on Notary is currently under public consultation and is scheduled to be submitted to the Parliament in October 2015. The Chamber of Notary will be involved in respective working groups. As soon as the Law is approved, it needs to be followed-up with drafting of secondary legislation. At the moment, notaries are striving to have direct access to the data of municipal cadastral offices, civil register or tax administration. Also, the uniform application of the law needs to be strengthened. There are discrepancies of set practices among notary offices in different municipalities, sometimes even in the same municipality. As such, the guiding role of the MoJ vis-à-vis both, the notary and the notary offices, needs to be strengthened and enhanced.

As an alternative mechanism of dispute resolution, MoJ has also established mediation and its mediation Commission. Over the last years, a great deal of work has been carried out to institutionalize mediation in Kosovo. To date, all in all there are seven mediation centres operating all over Kosovo (Prishtinë/Priština, Pejë/Peć, Gjilan/Gnjilane, Ferizaj/Uroševac, Gjakova/Đakovica, Prizren and Mitrovica/Kosovska Mitrovica), and further mediation centres are planned in order to cover court’s branches in all regions of Kosovo. Currently, they rely on donor support and should be made sustainable. Mediation centres have been playing a positive role so far. There are 170 licenced mediators of which 163 are active. The number of cases referred to mediation centres has increased considerably (i.e. 178 cases were referred in 2012, 530 in 2013, 1076 in 2014 and 814 during January-July 2015). The same applies to the number of cases resolved (1912 resolved cases against 361 not yet resolved for the period 2012 till July 2015). Currently, it is planned that the Law on Mediation will be reviewed and, to this end, a concept paper has been already drafted and is in a discussion phase. In terms of donor support, the mediation has been basically supported by the United Nations Development Programme (UNDP), United States Agency for International Development (USAID), and Berlin Centre for Integrative Mediation (CSSP). It should be noted that the future sustainability of mediation centres is uncertain. Nonetheless, at the moment establishment of an independent Mediator’s Association or other body, independent of judicial and executive powers that would manage and supervise mediation, is being considered.

With entering into force of the Law on Enforcement Procedure in January 2014, the *Private Enforcement System* was established. Modelled on similar Western Balkans and EU Private Enforcement Systems, the new regime commenced on 1 January 2014 and since 1 July 2014 the Private Enforcement Agents have exclusive jurisdiction for enforcing virtually all civil court decisions. To date, twenty-five (25) Private Enforcement Agents have been certified/appointed with an authority to enforce court judgments under the new Law on Enforcement Procedures. The effective enforcement of civil judgments is a crucial element to ensuring justice and a key aspect of public trust in courts as it is vital to economic growth, job creation and increased prosperity. Established in January 2015, the Chamber of Private Enforcement Agents serves as a self-regulating body for the professional development and administration of the new profession. The Chamber does not have permanent premises yet, while the current ones (until April 2016) are financed by USAID. The Chamber's vision is to establish an efficient and effective enforcement system.

The *Bankruptcy Administrators* have been newly introduced in Kosovo through the Law No. 2003/4 on Liquidation and Reorganization of Legal Persons in Bankruptcy. After passing the bankruptcy administrators' exam the MoJ can issue licenses to applicants, which is a requirement for the execution of the tasks vested with the administrators. The tasks include taking possession of property of the debtor, making payments to creditors on account of approved claims and take further action related to safeguarding the possession and to the enforcement process. Currently, 11 bankruptcy administrators are officially registered at the MoJ. There is no association or chamber established yet although the law on associations provides for it.

Established in line with the Law on the Bar dated 21 May 2013, the Kosovo Bar Association (KBA) is an independent organization with public authorisation in charge of regulating advocacy as an autonomous profession and independent service. KBA represents the advocacy in Kosovo. KBA’s aim is advancement of the RoL by supporting the process of legal reforms. As per the Law, lawyers who exercise their profession in Kosovo have to be members of the KBA which has a mandate to supervise the services provided by Kosovo lawyers and, at the same time, to enhance and improve their capacities through offering training and education programs. As of August 2015, KBA has 595 licenced lawyers, out of which only 75 are females (or 12.61%) and 37 (or 6.22%) are from other communities (24 Serbians, 5 Bosnians, 5 Turkish, 2 Gorani and 1 Roma). KBA’s Assembly consists of all registered and licensed lawyers; the President, with a two year mandate; the Steering Board, which consists of 11 members (and supported by 9 administrative staff) serving a three year mandate; the Supervisory Board; the Complaint Committee within KBA Assembly. The Assembly consists of all registered KBA lawyers. In order to bring KBA member and its support staff on a par with other justice actors and to reach required international standards, there is a need for further support.

The establishment of these institutions contribute to relieve the work of the courts contributing to the overall efficiency of the judiciary. Yet, there is still a need for harmonization of procedures and for promoting their services and activities. The free legal professions still need to be promoted both within the judiciary as well as vis-à-vis the public. Challenges have been encountered in the communication with stakeholders who may not yet be aware of the changed responsibilities and therefore coordination needs to be strengthened. For instance, the Cadastre Agency does not grant access to notaries and private enforcement agents to verify authenticity of property certificates and other documents. Likewise, due to the lack of awareness among citizens they often still refer to courts for services that can be rendered by notaries or enforcement agents. At the same time, the courts' awareness of the importance of the existence of free professions needs to be improved for an adequate referral system of cases to the free legal professions.

Furthermore, MoJ is drafting a law on establishing an Academy of Justice, which is in the consultation phase. The current mandate of the Kosovo Judicial Institute (KJI) may be extended to include further legal professions, including those mentioned above. This Project would have to take such change of circumstances into account. In any event, a sustainable legal education/training system will be supported.

## Related programmes and other donor activities

Due to the complexity of the project as well as the high number of donors involved a strong coordination mechanism is necessary.

## European Union Office in Kosovo

Through the IPA programme as well as other financing instruments, the EU has funded numerous projects in the RoL sector. This assignment is part of the overall preparatory phase for EU assistance to Kosovo under IPA 2014. This IPA 2014 project in the area of Free Legal Professions aims to support Kosovo in strengthening the judiciary through strengthening the free legal professions and the bar association in line with EU *acquis*.

***Past Projects***

***Re-Appointment of Judges and Prosecutors in Kosovo*** ***(2009-2010)***

The project enabled a one-time countrywide re-appointment process where all judges and prosecutors in Kosovo were evaluated and selected based on merit, in terms of professional qualifications and experience as well as professional and personal integrity.

***Legal Education System Reform (2009-2011)***

The overall objective of this twinning project was to strengthen RoL, ensure the independence and improve the efficiency of the judiciary in Kosovo by developing a sustainable legal education system and building up training capacities for law students, judges, prosecutors and advocates. The project aimed at improving the capacity of the competent institutions to provide high quality and sustainable legal education and training in compliance with European standards. Within the project, legal professionals were provided with compilations of applicable laws, publication of court decisions and legal doctrine. The current project was built, *inter alia*, on the results of the Twinning on Legal Education System Reform.

***EU Standards for the Ministry of Justice (2009-2011)***

This Twinning project built on the activities carried out under previous European Agency for Reconstruction (EAR) projects. The overall objective of this project was to strengthen the administrative, policy making and legal drafting capacities within the MoJ and to reduce the backlog of cases in courts by setting up mechanisms for Alternative Dispute Resolution (ADR), introducing arbitration proceedings and increasing the performance of the probation and correction services. This project had also assisted in development of legislation on arbitration and mediation, as well as improvement of organisational environment of mediation, identification, selection and training of mediators.

***Support to Legal Translators/Interpreters and Legal Linguists (2010-2012)***

The purpose of this project was to enhance the efficiency and credibility of the administration, the justice system and the law enforcement authorities in Kosovo by increasing the proficiency of legal translation/interpretation through the development of curricula and standards for translators/interpreters.

***Ongoing Projects***

***Further Support to Kosovo Legal Education Reform (2013-2015)***

The overall objective of the project is to strengthen the RoL sector in Kosovo, while it’s purpose is to further strengthen the Kosovo Legal Education Reform. The project focuses on further developing KJI’s capacity to play its role in providing professionally trained personnel to be potentially appointed by the Kosovo Judicial Council (KJC) and the Kosovo Prosecutors Council (KPC). Building on the basis established by the previous twinning project on Legal Education Reform (IPA 2008), the project contributes to strengthen KJI with a functional and running Programme for Research and Publication allowing access to legal materials; enhances KJI training on court management; enhances management skills for future judges, prosecutors and non-judicial staff notably with practical experience; and, last but not least, supports the legislative process regarding legal education reform including harmonization of legislation and further development of KJI.

***Support to the Kosovo Judicial/Prosecutorial Council (2011-2016)***

The overall objective of this Project is to continue supporting the efforts to develop the Kosovo Judiciary in line with EU standards by increasing its independence and improving its performance. It will also develop and strengthen the independence, performance, professionalism and efficiency of the KJC and the KPC to the level expected from a country on its way towards full participation and membership to the EU. Further, the project provides strategic support to both Councils to develop their organisational capacities and professional capabilities to execute their mandates according to the new relevant legislation.

***Improving the Approximation of Laws and Coherence of the Legal Framework (2012-2016)***

The purpose of the project was to enhance the legal framework of Kosovo by improving the coherence of the legislative framework for the justice sector and by enhancing the approximation of laws with the EU *acquis* in the area of justice. The project is assisting MoJ with drafting the relevant primary and secondary legislation, inducing the Law on Mediation (alignment with the EU Directive 2008/52/EG).

***Support to Civil Code and Property Rights (2014-2016)***

The overall objective of the project is to strengthen RoL and approximate domestic legislation of Kosovo with the European standards in the area of justice and property rights. The project will conduct an overall analysis of the existing Civil Code and property rights in Kosovo and, on the basis of that, to start the process of improving the overall coherence of the regulatory framework on property rights. The project relates to the importance of harmonisation and development an all-inclusive Civil Code and its harmonisation with the *acquis* and other relevant EU principles, as well as the strengthening of property rights for the benefit of the RoL, the economic and social development, and the European integration of Kosovo.

***Support to Kosovo Institutions in the Field of Protection of Personal Data (2012-2016)***

This project will support the increase of capacities and functioning of the National Agency for Protection of Personal Data (NAPPD) and other actors with responsibilities in the field of protection of personal data, and support the Agency in completing the legal and regulative framework on implementation and enforcement of the law. The project also aims to review the relevant legislation touching upon personal data protection to ensure full alignment with the legal framework for protection of personal data and to increase public awareness on the issue of personal data protection, the legal and policy framework as well as their implementation and enforcement.

***Upcoming Projects***

***Further Support to Legal Education Reform***

This IPA 2014 project aims to increase the justice sector capacities through strengthening the capacities of the Kosovo. The project will further develop trainings needs identification mechanisms; enhance the professional capacities and training skills of the trainers in the priority training fields and for administrative staff; develop comprehensive curricula in the identified fields for the administrative staff; further develop orientation programs; assist KJI in developing and implementing its strategic planning; further develop professional capacities and skills of KJI’s management and staff with regard to the transformation into an Academy of Justice; update and supplement the current KJI’s database with additional modules/tools and implement relevant trainings for KJI’s staff. The project is expected to start by the end of 2015.

## European Union Rule of Law Mission in Kosovo (EULEX)

Established in 2008, EUELX is the largest civilian missionever launched under the CSDP. The central aim is to assist and support the Kosovo authorities in the RoL area, specifically in the police, judiciary and customs areas. The mission is not in Kosovo to govern or rule; it is a technical mission which monitors, mentors and advises whilst retaining a number of limited executive powers. EULEX works under the general framework of United Nations Security Resolution 1244 and has a unified chain of command to Brussels.

In 2012 EULEX was reconfigured and the mandate extended to June 2016. The mission was downsized by some 25% and currently operates with two sections: an Executive Division, which works on the mission’s executive mandate; and a Strengthening Division, which concentrates on monitoring, mentoring and advising the Kosovo authorities.

The Executive Division, where appropriate, investigates, prosecutes and adjudicates cases relating to: war crimes, terrorism, organised crime and high level corruption, property and privatisation cases and other serious crimes.

## United States Agency for International Development (USAID)

USAID is one of the most important donors working in the area of RoL, democracy and governance and economic growth in Kosovo. It has numerous ongoing and forthcoming projects in the area of RoL, contract law, property law and economic growth. Relevant past, ongoing and future projects are described below:

***Past Projects***

***Systems for Enforcing Agreements and Decisions (SEAD) (2009-2012)***

SEAD was a three years program which ended in 2012. SEAD focused on strengthening the legal systems in Kosovo available to citizens and businesses for the 1) enforcement of contracts and obligations; 2) enforcement of judgments; 3) use of ADR mechanisms. SEAD provided substantial support to the MoJ to draft the Law on Obligations. SEAD assisted the University of Prishtina Law Faculty to establish, accredit and implement a Masters of Law (LL.M.) degree program in contract and commercial law running since October 2011. SEAD introduced a system of ADR in Kosovo, including both arbitration and mediation.

***Kosovo Legal Professional Program (KLP) (2012-2015)***

Through its Kosovo Legal Profession (KLP) Program, USAID supports the strengthening of legal education and the legal profession in Kosovo.  The program works with Law Faculties to enhance masters’ level clinical legal education and with the Bar Association’ to strengthen continuing legal education programs, Disciplinary systems and other membership services.  The program will enable universities to produce a new generation of legal professionals better equipped to function more effectively in the justice sector.  The project will also support the KBA to promote legal excellence among its members.

***Ongoing Projects***

***Effective Rule of Law Program (EROL) (2011-2015)***

The Effective Rule of Law Program (EROL) builds upon USAID’s prior efforts to advance RoL in Kosovo. Specifically, EROL seeks: (1) to strengthen the justice system through institutional and legal reforms; and (2) bolster public confidence in the RoL by increasing knowledge of and participation in the justice system. EROL will complete the Model Courts Program initiated under the previous Justice Support Project by creating 18 additional model courts throughout Kosovo. The program has four components: 1) Ensure effective operations of justice sector institutions; 2) Increase efficiency of court operations; 3) Improve professionalism of justice system actors; 4) Increase citizen awareness and role in ensuring the delivery of justice. EROL supports the KJC, KPC, MoJ, KJI, Office of the President of Kosovo and the Constitutional Court.

***Contract Law Enforcement Program (CLE) (2013-2016)***

The Contract Law Enforcement Program (CLE) aims to increase the efficiency of enforcement of court judgments and improve the business environment through improved commercial law framework and use of contracts. Specifically CLE: 1) Improves the enforcement of judgments system through the introduction of a private bailiff system; 2) Reduces the backlog in enforcement cases; expands the system of mediation in Kosovo; 3) Increases knowledge on the commercial law topics for Kosovo's judges and lawyers; and 4) conducts outreach to the business community on the importance of contract use and ADR. Backlog reduction in the courts will liberate significant amounts of capital into the economy while raising the level of trust in the judicial system. The new private enforcement system will liberate the courts from enforcement, allowing them to concentrate on delivering effective justice.

CLE Program supports the KJC and the Courts to improve management of judgment case load and increase the efficiency of enforcement actions. It works closely with court enforcement personnel to place greater emphasis on performing enforcement against debtor bank accounts as opposed to seizure and auction of movable property. The Program and the KJC have set a goal of effectively eliminating the backlog by 2016. It also supports the MoJ to implement the Law on Enforcement Procedures, including the introduction of a Private Enforcement Agent System. The Program has assisted the MoJ to recruit, vet, and train the new Private Enforcement Agents in order to ensure the highest degree of professionalism and competence possible. Additional support to the MoJ to establish a vigorous and robust monitoring and disciplinary system is ongoing and concurrent with introduction of new system. Assistance to establish the Chamber of Private Enforcement Agents will be provided, too.

CLE Program works closely with Kosovo business community to improve knowledge and understanding of the importance of using written contracts and utilizing ADR mechanism such as mediation and arbitration. The Program has developed a number of Standard Form Contracts with explanatory notes and legal commentary, and conducts an on-going series of roundtables with the business community throughout Kosovo.

CLE Program manages the Mediation Centres in Gjilan, Peja and Prizren, and supports other mediation activities throughout Kosovo. It supports the KJC and MoJ’s Commission for Mediation in preparing and implementing the necessary legislation and to build the essential infrastructure for empowering mediation, and guaranteeing its sustainability. Mediation has been strongly supported by the Government institutions and by the courts: the Gjilan Mediation Centre is now located inside the Gjilan Basic Court’s building. Setting a uniform standard for the referral of court cases to mediation was one of the milestones in the on-going development of mediation in Kosovo. The Program continues to support the further development of sustainable and growing mediation services in the entire territory of Kosovo by also supporting the creation and empowerment of the Association of Mediators, a non-governmental organization that will represent mediators and the institution of mediation in public institutions.

***Increasing the Capacity for Arbitration Services (2013-2015)***

Kosovo Alternative Dispute Resolution Center (ADR Center) of the American Chamber of Commerce (AmCham) in Kosovo increases awareness and demand for arbitration and mediation in the business community and builds capacities to provide premier dispute resolution services through the following activities/ objectives: Arbitration Training for the Arbitration Roster; Increased awareness and demand for Arbitration Services; and, Case tracking mechanisms and Standard Operating Procedures (SOP). Kosovo AmCham ADR Center intends to increase awareness and demand for arbitration by incorporating best practices and responding to the needs of the business community, thus creating a platform for sharing expertise with all stakeholders. Another dimension of the activities is to increase internal capacities and capacities of the arbitrators and mediators to handle complex cases.

***Support to Permanent Arbitration Tribunal (2013-2015)***

KCC Permanent Arbitration Tribunal increases awareness and demand for arbitration in the business community and builds capacities to provide premier dispute resolution services. The activity supports arbitration Training for the Arbitration Roster; Increased awareness and demand for Arbitration Services; and, Case tracking mechanisms and SOP. KCC Permanent Arbitration Tribunal intends to increase awareness and demand for arbitration by incorporating best practices and responding to the needs of the business community, thus creating a platform for sharing expertise with all stakeholders. Another dimension of the activities is to increase internal capacities and capacities of the arbitrators to handle complex cases.

***Property Rights Program (PRP) (2014-2018)***

The Property Rights Program’s overall goal is to improve the property rights regime in Kosovo, to strengthen RoL, and increase economic growth and investment. The Property Rights Program will achieve this goal by focusing on four objectives: (1) better coordination and setting of policy priorities in the area of property rights in close cooperation with the relevant stakeholders; (2) improved court processes related to property claims; (3) enhanced ability for women to exercise their property rights in practice; and (4) greater access to information and understanding of property rights.

The objectives will be achieved in close coordination and collaboration with appropriate Kosovo public and private sector counterparts, donors, and beneficiaries. Sustainability will prove critical and using USAID Forward Implementation and Local Solutions mechanisms will help ensure counterpart buy-in, greater impact and sustainability.

## Organisation for Security and Cooperation in Europe (OSCE)

***Support for the implementation of draft procedure on the ex-post evaluation of legislative reform – Phase II: Evaluation of the provisions of the Law on Enforcement Procedure (2014-2016)***

In its first phase, the project supported the Prime Minister’s office Legal Department to develop Guidelines on the Ex-post Evaluation of Legislation, approved by the Government this July. In its second phase of the project, which has just started, the implementation of the Guidelines will be piloted assisting the MoJ in evaluating the provisions of the Law on Enforcement Procedure. In this regard, the project is closely cooperating with the Department for Free Professions. The project is expected to be extended to the next year.

***Support to the Kosovo Bar Association on coordinating ex-officio counsel and to the Kosovo Bar Association women lawyers mentoring network (2015-2016)***

The project aims at supporting the KBA in implementing a coordination mechanism for free criminal defence. The project is anticipated to be extended to the next year. In 2016 the KBA will also be supported in designing and implementing a training programme on the business of law for potential women lawyers with the aim to improve their abilities to open legal offices.

***Support for the harmonization of judicial and prosecutorial practice (2014-2016)***

Another activity relates to the harmonisation of judicial practice (which is also foreseen to continue next year). Under this activity, the project has been looking at the function of the notaries with regard to non-contentious inheritance cases and the fact that, in practice, some cases continue to be dealt with by the courts and some others by notaries. A concern remains that there is no uniform practice in dealing with these cases and that not all citizens of Kosovo are currently benefiting from these new services since there are currently no Kosovo Serb notaries. The amendments proposed to the Law on Notaries and those related to this specific function of the notaries are also being monitored. Comments to the first draft were provided.

## Gesellschaft für Internationale Zusammenarbeit (GIZ)[[2]](#footnote-2)

***Support for the development and enforcement of constitutional and EU-compliant law in Kosovo (2009-2017)***

The objective of the project is that a comprehensive structure is established to support the judiciary and the administration in performing their tasks within the context of pre-accession to the EU. The project focuses on three areas. First, it supports KJI and Kosovo Institute of Public Administration (KIPA) to develop and sustain a legal training system for the Judiciary and Public Administration. Secondly, it participates to the developments of law compilations (for instance, CD-ROM Applicable Laws in Kosovo – Civil and Administration Field) and legal commentaries as legal tools for judges and prosecutors. So far, GIZ has produced commentaries on Family Law and Administrative Law. Finally, it provides support to the Kosovo Constitutional Court.

***Open Regional Fund for South East Europe – Legal Reform***

*Previous Subprojects in the field of civil law involving Kosovo*

Previous activities of the Open Regional Fund – Legal Reform that covered the civil law field were subprojects on the support to the improvement of the Civil Law Notaries and its supervision in South East Europe. The ongoing Subproject on Gender oriented implementation of ADR instruments, and a Subproject on Cross-border recognition and enforcement of court decisions and titles.

* ***Improvement of the performance and oversight of Notary Services in South East Europe (January 2012-December 2012)***

The aim of the notary subproject was to harmonize national laws on the notaries, to increase the quality standards and to support the introduction of a notary system in Serbia and Kosovo by regional cooperation. Additionally, the ministries of justice in the region were trained to carry out the legal supervision over the notaries effectively and to prove the compliance with professional legal principles. Countries participating in this subproject were Albania, Bosnia and Herzegovina (BiH), Croatia, Macedonia, Montenegro, Kosovo and Serbia.

The activities that were envisaged within the project in order to achieve the goal of improved notaries were the following: planning workshop with partner; regional analysis and assessment of the general conditions for the electronization of the notary offices; gender analysis of the professional codes of the notary chambers; drafting of recommendations for the gender sensitive alignment of the professional codes of conduct; realization of up to three regional training modules for the MoJ; up to two regional trainings for notaries; preparation and publishing up to two specialized publications; support with electronization of the notary offices; public relations campaign in the region; on-the-job training of newly-admitted notaries; support of the accession of notary chambers to international associations.

* ***Alternative Dispute Resolution (ADR) (September 2013-September 2015)***

The goal of the ADR subproject was to strengthen women as actors in ADR procedures and to align application of ADR instruments in cross border commercial disputes with international standards to guarantee an overall better access to justice.

In order to achieve this goal, the following activities were planned:

* Analysis of the situation of female actors in ADR procedures as part of a baseline study on gender equality between women and men in the ADR area (currently in progress)
* Measures to promote women as actors in the ADR area:
  + Promotion of publications of women
  + Networking of women as actors in ADR
  + Development of a catalogue of measures for the promotion of women in the ADR area
* Round tables for decision makers and to promote female actors in ADR procedures
* Analysis of the legal framework including case law:
  + Processing the same for the CLOUT database
  + Support of the Commentary of the New York Convention and support of the website newyorkconvention1958
* Round table for decision makers with the focus on the necessary legislative activities (incl. examination of the need to maintain the reservations of the New York Convention)
* Support to legislative activities
* Workshops/Trainings for practitioners
  + Workshops for legal professionals and business on practical implementation ADR (case studies)
  + Seminars on how to draft an arbitration clause and needed contractual terms
  + Training for arbitrators and/or judges on ADR instruments (particularly in relation to the interaction of court and extrajudicial proceedings)
* Support to the reporting mechanisms to the UNCITRAL database CLOUT (e.g. via national reporters)
* Support to educational matters in ADR area
  + Promote publication of scholarly work and awards, judgments from the region
  + Organisation and support to regional and international students' competitions
  + Seminars or lectures on ADR for Law and Economic students (bachelor & master)
* Exchange of experiences in the region via publications, seminars, study tours etc.
* ***Trans-boundary Judicial Cooperation in Civil Matters (September 2014 – August 2016)***

The aim of this subproject was to improve judicial cooperation in civil and commercial matters in the region, by establishing uniform rules on the international jurisdiction of the courts, facilitating recognition and by introducing an expeditious procedure for securing the enforcement of judgments and public documents. There is a common understanding that due to very similar legal traditions the judicial cooperation in civil and commercial matters could be implemented by the same legal regime and standards. On the initiative of several Western Balkan countries, it was agreed to draft a regional convention according to the well-established European models that go back to 1968. The convention should be open also to other countries in the neighborhood and the EU. The subproject was supported by the Ministries of Justice of Albania, BiH, Croatia, Kosovo, Macedonia, Montenegro, Serbia and Slovenia and the international partners of the Hague Conference on Private International Law, EC, DG Enlargement, the Swiss Ministry of Justice and the Regional Cooperation Council (RCC).

## Swiss Agency for Development and Co-Operation (SDC)

The Swiss Government helped developing and implementing an operational notary system since 2006.

***Establishment of a Notary System in Kosovo - Phase III (2012-2017)***

Technical inputs have been provided in drafting the law and secondary legislation and harmonising other legal provisions. The notary candidates have been trained and examination process facilitated. The MoJ has been supported throughout the introduction and establishment of the new system. The project further facilitated the set up of the Kosovo Chamber of Notary and training system for notaries. Swiss support to the notary system will continue until mid-2017 aiming at supporting further consolidation of this new service. The objective is to lead to a more effective and efficient legal system, considering the courts shall be relieved of the majority of non-contentious cases and thus citizens will have better access to justice.

## Royal Norwegian Embassy

***Past Projects***

***Berlin Centre for Integrative Mediation (CSSP) (2012)***

Outreach component (call for applications and information on mediation in general) of the project that foresaw the training and certification of 30 mediators in Northern Kosovo, and later the establishment of two mediation centre, one on each side of the Ibar River and the establishment of community mediation through the cooperation of the two mediation centres.

***Ongoing Projects***

***Agency for Free Legal Aid (2014-2015)***

Providing free legal assistance to all citizens of Kosovo through the provision of free legal aid to those who do not have sufficient funds or which is made possible to all citizens who meet the criteria conform Law on Free Legal Aid. Clients will be offered legal advice, drafting of pleadings and representation in courts and other bodies, engaging lawyers from KBA.

## Swiss Agency for Development and Co-Operation (SDC)/Royal Norwegian Embassy

***Ongoing Projects***

Swiss Government, through its Human Security Division Programme, and Norwegian Royal Embassy have been both supporting training of mediators in Mitrovica North and South through the German NGO Berlin CSSP. The project started in 2012 and is intended to last until the end of 2015 with a possible extension into 2016. The project “Creating a Third Side through mediation by the civil society” includes the training of mediators, the establishment of a mediation centre with an office in Mitrovica North and one in Mitrovica South, awareness-raising towards the public, collaboration with the court, and promotion of a non-violent problem-solving culture. The project focuses on four components that will be necessary to professionalise individual mediators working on cases and to build a network and a so-called “Third Side”. The approach and all components aim to create a network and a space for problem solving in Mitrovicë/Mitrovica and North Kosovo. The first component focuses on training and professionalising mediators in Albanian and Serbian languages. The second component builds a core mediation team of four mediators working together from two mediation centres on both sides of the river. The third component is the most comprehensive and distinct one where mediators will create a non-violent “Third Side” through pro-active community mediation, public outreach and dialogue activities. The fourth component aims to mediate cases from residents. These cases can either be cases brought directly to the mediation centres and mediators from the disputing parties (out-of-court mediation), or they can be referred cases from a court (court-annex mediation). 18 mediators were trained by CSSP in 2013 (mixed Albanian and Serbian group), another 21 were trained in September 2014 but this time only in South Mitrovica because the Serbian mediators could not be licensed due to non-recognition of diplomas from the University of North Mitrovica by the MoJ. CSSP organized a conference entitled “Mediation in Kosovo: Maximizing Potential II” on 27-28 May 2015.

## United Nations Development Programme (UNDP)

***Ongoing Projects***

***Support to Strengthen the Rule of Law in Kosovo (2014-2015)***

The Support to Strengthen the Rule of Law (SSROL) project builds upon UNDP’s prior efforts to develop RoL and access to justice in Kosovo. The main objective of the SSROL is to support the provision of an efficient, effective, and timely administration of justice. To achieve this objective, the project’s strategy is focused on the following three interlinked levels:

1. The policy level: is addressing the policy and coordination aspects between justice institutions, and harmonization of strategic planning. This will lead to an increased efficiency on the implementation of reforms and the new legal framework.
2. The capacity development and institutional reform: is focusing on providing tailor-made institutional support to increase institutional and individual capacities, efficiency and accountability.
3. Access to justice and service delivery: is focusing on increasing access to justice for Kosovo’s population and the need to reduce the courts' and prosecution offices' cases backlog, through the mediation system. More specifically, UNDP is supporting a more accessible mediation system, and an increased number of referrals from courts, prosecution and citizens. This effort is improving citizen's access to justice and contributing to a reduction of backlog of cases. The project is providing tailor-made capacity development training for mediators as well as expert support in the process of drafting of the new Law on Mediation.

The project is supporting the MoJ to update the Judicial Bar Exam Manual. The Bar Exam Manual has been completed and was officially published, in both Albanian and Serbian languages, on 16 September 2015.

The project is being implemented in close cooperation and coordination with MoJ, KJC, KPC, KJI and Mediation Commission.

# OBJECTIVE, PURPOSE & EXPECTED RESULTS

## Overall objective

The overall objective of the project of which this contract will be a part is as follows:

* To strengthen the judiciary by strengthening the free legal professions and the bar association.

## Purpose

The purpose of this contract is to fully functionalize the system of free legal professions by strengthening the Department for Free Legal Professions and the capacities of free legal professions and the bar.

## Results to be achieved by the Contractor

The results to be achieved are as follows:

* Chamber of notary, law enforcement agent association, mediation centres are strengthened, and an association for bankruptcy administrators is established and functional.
* Capacities of private enforcement agents, notaries, bankruptcy administrators, mediators and the bar are strengthened.
* Department for Free Legal Professions is fully functional, with a particular emphasis on training, licensing and oversight mechanisms.
* Capacity of bar is strengthened.
* Awareness about free legal professions and coordination among relevant stakeholders and the public is increased.

The main beneficiaries are the MoJ and legal professionals’ bodies and their members.

# ASSUMPTIONS & RISKS

## Assumptions underlying the project

In order to achieve project objectives, good cooperation and coordination from the side of the various judiciary institutions and donors and full commitment of national authorities is assumed.

Furthermore, it is assumed that other key requirements are met by the start of project such as:

* Kosovo government continues to support reforms in the justice system in its entirety
* Political will to strengthen the RoL sector
* The process is not disrupted by external developments (regional conflict, inter-national financial crisis)
* Sufficient resources, both human and material, are allocated
* Effective communication and active participation of all stakeholders
* Continuous commitment and cooperation of all stakeholders
* EU integration remains a government priority
* Assignment, availability and motivation of the staff of beneficiaries during the entire project duration
* Department for Free Professions is sufficiently staffed and equipped
* Staff retention
* Necessary policy decisions to initiate the drafting/revision of legislation are made in a timely fashion
* Willingness of the MoJ to take full ownership and responsibilities during the entire life of the project

## Risks

Successful implementation of this project has four main risks, as follows:

* **Lack of coordination among donors**. Due to the important role played by donors in Kosovo, it is crucial that the EU and USAID as well as other donors agree on a set of principles to coordinate their work plans in order to avoid unnecessary donor competition that can hinder the support to free legal professions. It requires in fact the highest level of commitment and coordination of local and international actors. Lack of coordination may result also in inconsistencies of legislation drafted during the project. The lack of local ownership and failure of main donors EU and USAID to coordinate their technical assistance projects may undermine the success of respective projects.
* **Lack of qualified staff.** Successful implementation of the project requires allocation of sufficient qualified staff and resources in due time. The lack of adequate resources for the implementation of such a technical assistance support may pose significant obstacles.
* **Lack of adequate cooperation among different competent institutions** to coordinate responsibilities and efforts in the field. Free legal professions touch a number of institutions (e.g. the Department of Free Legal Professions at MoJ, the Bar Association, the Chamber of Notary, etc.) requiring an adequate level of cooperation in order to maximize benefits from the technical assistance.
* **Alternation of KJI’s mandate.** The change in the system maybe lead to uncertainties. The plans for the future Academy of Justice include possibility to provide trainings for legal professionals other than judges and prosecutors. The project needs therefore to monitor and possibly contribute to the transformation process.

# SCOPE OF THE WORK

## General

## Project description

The Project Partner is the MoJ of Kosovo, which shall ensure full coordination and coherence among the project beneficiaries and stakeholders to fully achieve the results. Representatives of other bodies/stakeholders should also be involved in the project management to ensure the achievement of the project’s results, namely representatives from mediation experts, notaries, private enforcement agents, bankruptcy administrators and private advocates.

The Project is designed to provide technical assistance to support the MoJ and the respective bodies. It will provide support to the relevant beneficiary institutions in reviewing the legal framework that concerns newly created free legal professions, in developing professional and ethical standards and also in increasing awareness of other related judiciary entities/institutions on the role and relevance of the free legal profession to the overall efficient functioning of the RoL in Kosovo.

The results are aimed at strengthening the judiciary sector by improving the capacities of free legal profession through further development of court connected mediation, notary, private enforcement agent and bankruptcy administration systems as well as the KBA. Reinforcing the new mechanisms and institutions (such as notaries) as well as established ones (such as the KBA), will need to focus on various levels of sustainability: administrative/procedural level; institutional level; inter-institutional level and justice system level.

The monitoring of the work of the free legal professions is the responsibility of the Department for Free Professions within the MoJ. The Project will support the Department and aim at introducing an efficient monitoring system, including training and licencing in accordance with EU standards.

Results in this sense will be achieved through tailored technical assistance for: development of SOPs at each institution level (including administrative and operational procedures); training and capacity building, with strong focus on Training of Trainers activities; strategic planning for definition of medium and long term reform strategy and formulation of time-bound action plan; improvement of impact monitoring mechanism for systematic review of implemented action plan; carrying out of study visit(s).

The institutions would like to emphasis the gender aspect and the involvement of communities in the foreseen project activities. Specific activities shall be developed to tackle such issues.

Visibility events to promote the project activities and related outcomes shall be conducted frequently. Communication strategy shall be developed in line with EU visibility guidelines.

## Geographical area to be covered

The project will cover the entire territory of Kosovo.

## Target groups

The main beneficiary institution of this project is the Department of Free Legal of the MoJ of Kosovo and Free Legal Professions, namely advocates, bankruptcy administrators, mediators, notaries and private law enforcement agents. The Department of Free Legal Professions will take a coordinating role for the implementation of this project.

## Specific work

The project will contribute to the strengthening and development of Free Legal Professions. The Contractor is expected to ensure achievements of project results. The detailed layout of the activities will be further elaborated during the Inception Phase.

The following activities shall be carried out but are not limited to:

**Component 1: Systems for free legal professions are strengthened**

The aim of this Component among other is to assist the MoJ and Free Legal Professions to review and draft necessary legislation in line with the *EU acquis* and best international experiences, to develop policy documents, to carry out training needs analysis and targeted ToT trainings as well as outreach activities.

Activity 1.1: Review of legal framework, including secondary legislation, for the bar, notaries, enforcement agents, mediation and bankruptcy administrators where necessary

Activity 1.2: Support institutional development for the free legal professions, e.g. by developing professional and ethical standards for its members and enforce these standards through the disciplinary process in line with international best practices

Activity 1.3: Further develop the mediation centres

Activity 1.4: Conduct a Training Need Analysis for the legal professions and revise mandatory training curricula for all free legal professions, including for modules on commercial and family law

Activity 1.5: Conduct specialised training sessions for all free legal professions with a focus on the ToT approach

Activity 1.6: Develop talent scout program for law students

Activity 1.7: Carry out needs analysis in terms of connecting free legal professions’ databases with other relevant institutions

Activity 1.9: Support outreach and awareness activities addressed to judiciary and other legal professionals, public utility companies and other public service providers and the private sector

**Component 2: The Department for Free Professions is fully functional**

The aim of this Component is to strengthen the Free Legal Professions Department at MoJ through introducing and developing a monitoring system, a training concept, development of a licensing system as well as streamlining workflows of and providing trainings for the staff of the Department.

Activity 2.1: Introduce and develop monitoring system to measure performance of the free legal professions

Activity 2.2: Introduce and develop a training concept for the free legal professions

Activity 2.3: Further develop a licensing system in accordance with EU standards

Activity 2.4: Design workflows for the Department

Activity 2.5: Capacity building for all department’s staff

Activity 2.6: Update current databases and develop new ones for exams and licenced candidates on free legal professions concerned

**Component 3: Capacity of the Bar Association is strengthened**

The aim of this Component is to strengthen the KBA through carrying out training needs analysis and providing tailor-made trainings, developing a strategic planning and ToT system for the Bar, as well as designing a training system. KBA wants to attract especially women lawyers from all communities, which shall be taken into consideration while designing the project.

Activity 3.1: Assist KBA in developing strategic planning

Activity 3.2: Strengthen the capacities of KBA staff, in particular its administrative staff

Activity 3.3: Conduct a training need analysis

Activity 3.4: Develop a sustainable ToT system

Activity 3.5: Organize training sessions for lawyers, inters and other interested parties (i.e. candidates for the bar exam) in accordance with international best practices on delivering Minimum Continuing Legal Education (MCLE) for lawyers' trainings

Activity 3.6: Design a training system including handbook for trainers, selection criteria, performance evaluation criteria for evaluation of trainings and trainers

## Project management

## Responsible body

The EU Office in Kosovo is the Contracting Authority responsible for managing this contract.

## Management structure

A Project Steering Committee (PSC) chaired by MoJ shall be appointed for this project. The representative of the EU Office will be one of the PSC Members. Representatives of MoJ and other Free Legal Professions shall be members of the PSC. The PSC may invite others to participate in its meetings, as it deems necessary.

When establishing the PSC consideration should be given to ensuring a smooth implementation of the project activities while at the same time including main stakeholders in these activities. The Contractor should make a proposal for ways to ensure stakeholder involvement and commitment to this project, and while stakeholders may not be included in the PSC, the Contractor should seek other ways of liaising with the stakeholders throughout the project implementation.

The PSC will meet as required but at least on a quarterly basis. The PSC shall be responsible for the overall coordination, direction and oversight of the project and its activities. The PSC shall guide the Contractor in achieving its tasks, monitor progress of the project activities and ensure timely achievement of results as set out in these ToR. The Contractor shall ensure that the PSC is kept informed on all project progress as well as developments affecting project’s execution. The Contractor shall provide for the Secretariat of the PSC (preparation and circulation of the agenda, writing and distribution of minutes, etc.). The date of the PSC meeting, the agenda and the documents necessary shall be set and circulated among the interested parties at least two weeks in advance. The Contractor will keep archive of the project documentation in coordination with the main beneficiary (MoJ).

All PSC decisions related to the project will require final endorsement of the Contracting Authority. The Contracting Authority has the ultimate authority regarding all decisions relating to the management of this project.

The Team Leader will be responsible for all aspects of day-to-day project management, including coordinating the work of all experts and will be responsible for proper and timely reporting to the EU Office in Kosovo.

## Facilities to be provided by the Contracting Authority and/or other parties

The MoJ will host the core project staff in its premises during the duration of the project. Fully furnished office accommodation for the project personnel (approximately 4 working spaces) will be provided by MoJ including water, electricity, heating, cooling, cleaning, telephone/telefax and internet access.

# LOGISTICS AND TIMING

## Location

The project will be carried out in Kosovo. The cost of all travel and accommodation for experts shall be included in the fees.

## Start date & period of implementation

The intended start date is May/June 2016 and the period of implementation of the contract will be 36 months from this date. Please see Articles 19.1 and 19.2 of the Special Conditions for the actual start date and period of implementation.

# REQUIREMENTS

**6.1. Staff**

Note that civil servants and other staff of the public administration, of the partner country or of international/regional organisations based in the country, shall only be approved to work as experts if well justified. The justification should be submitted with the tender and shall include information on the added value the expert will bring as well as proof that the expert is seconded or on personal leave.

Work experience will only be counted as of the day the relevant qualification was obtained.

Each expert should spend his/her time input in the beneficiary country. Any work conducted outside of Kosovo will be in exceptional cases only and needs to be duly justified. It will need prior approval by the Contracting Authority.

**6.1.1. Key experts**

Key experts have a crucial role in implementing the contract.

All experts mobilised under this contract must:

* have excellent communication and analytical skills;
* have excellent team working and management skills;
* be proficient in report drafting; and
* have excellent written and spoken English.

Any qualifications, skills and experience stated in the respective CV of an expert must be substantiated by supporting documents (with accurate translation into English), such as copies of degrees or diplomas and employers’ certificates.

Key Experts' CVs should clearly indicate the **start date** and **the end date** (month and year) of each assignment. Each assignment in the CV should be numbered and the same number should be written on the respective **signed supporting document**.

Travelling time to/from the beneficiary country will not be accounted for as working days and therefore cannot be invoiced as working days.

Key experts are allowed to work from home for limited activities, such as for preparing project inception, progress and final report, and subject to prior approval of the Contracting Authority. The number of home based working days has to be stipulated in the Organisation and Methodology of the Contractor's offer.

**Key Expert 1: Team Leader (minimum of 620 days)**

The Team Leader shall be responsible for the successful implementation of all project activities within the established timelines. S/he shall simultaneously serve as an expert to provide substantive input in the achievement of results related to component 1 and 2 and all issues referred to in this ToR.

The Team Leader shall bring strategic guidance and leadership to the project.

S/he is in charge of managing all the Short and Long Term experts. The Team Leader shall also be in charge of contacts and communication with the Contracting Authority and for communication and negotiation with all key stakeholders. Furthermore, the Team Leader will ensure that all gender, minority, cultural, environmental and ethical matters of relevance to the project are properly addressed.

The proposed Team Leader should have the following profile:

*Qualifications and skills*

* A Bachelor’s Degree in Law. A Master and/or PhD in a law field is considered as an advantage.

*General professional experience*

* Minimum 10, preferably 15 years, of professional experience as lawyer, legal professional[[3]](#footnote-3) or judge/prosecutor.

*Specific professional experience*

* Experience in leading teams gained in the public or private sector or in donor-funded projects in at least 1 and preferably 3 projects[[4]](#footnote-4) in the RoL area.
* Minimum 3 preferably 5 years of working experience with or within a self-regulating body of a legal profession and/or mandated licencing authority for a legal profession.

**6.1.2 Non-key experts (minimum of 1040 working days)**

Specified non-key experts are expected to cover and lead the separate legal professions as outlined above in these ToRs.

CVs for experts other than the key experts are not examined prior to the signature of the contract. They should not be included in tenders.

The Consultant must select and hire other experts as required according to the profiles identified in the Organisation & Methodology and in these Terms of Reference. They must clearly indicate their profile (senior/junior) so that the applicable daily fee rate in the budget breakdown is clear. All experts must be independent and free from conflicts of interest in the responsibilities they take on.

The selection procedures used by the Contractor to select these other experts must be transparent, and must be based on pre-defined criteria, including professional qualifications, language skills and work experience. The findings of the selection panel must be recorded. The selected experts must be subject to approval by the Contracting Authoritybefore the start of their implementation of tasks.

The ability of the Contractor to provide quality and timely short term experts stated in the fields of expertise is a key factor. Therefore, the Contractor is invited to detail the approach and experience in recruiting and providing short-term expertise in the Organisation & Methodology.

The selection criteria for the Senior Experts (minimum of 650 working days) will include but are not be limited to:

* Bachelor or Master degree in an area matching the nature of assignment and/or relevant experience;
* Experience as lawyer, legal professional or judge/prosecutor;
* Experience in working for a self-regulating body of a legal profession and/or mandated licencing authority for a legal profession;
* Experience in legislative drafting;
* Experience in delivering trainings/ToT;
* Experience on IT areas/databases/information management;
* Experience in public relations and/or carrying out outreach/awareness raising campaigns;
* Working experience as a lawyer, mediator, notary, bankruptcy administrator or law enforcement agent;
* At least 10 years of general professional experience;
* At least 5 years of specific professional experience in the related fields mentioned above.

The selection criteria for the Junior Experts (minimum of 390 working days) will include, but are not limited to:

* Bachelor degree in an area matching the nature of assignment and/or relevant experience;
* Experience as legal professional, judge/prosecutor and/or academic;
* Experience in civil law;
* At least 4 years of relevant general experience;
* At least 3 years of specific experience in related fields mentioned above.

Working on weekends and public holidays will not be accepted without prior approval from the Contracting Authority.

During the inception phase of the project, a deployment plan of non-key experts will be developed in cooperation and consultation with the EU Office in Kosovo.

**6.1.3 Support staff & backstopping**

The Contractor shall ensure appropriate backstopping and support staff. Backstopping and support staff costs must be included in the fee rates of the experts.

The Contractor shall recruit necessary support staff. The Contractor is expected to hire a full-time local office manager for the whole duration of the Project. The local office manager will, *inter alia*, be in charge of day-to-day management of the Project Office, will assist the Project in hiring the non-key experts and support the Team Leader in the establishment of the project team’s office(s) at the start of the project, support the drafting of the project’s implementation schedules or work programmes, support the regular reporting requirements, support in the organisation of meetings, seminars, workshops and other project related activities. The office manager must be fluent in spoken and written English, be able to communicate in local languages and have experience in office management, preferably with previous EU projects.

The Contractor shall provide sufficient capacity of interpretation and translation. Translation of outputs, both in Albanian and Serbian, are a full part of the activities to be implemented under the various components.

A focal point from the Contractor's headquarters shall be appointed for the whole duration of the project. The focal point must have experience from similar assignments. He/she will have the responsibilities of coordinating the overall project activities from the Contractor headquarters, provide in a timely manner relevant and qualified experts to support the project, ensure reporting to the Contracting Authority, ensure coordination between the project office, the Contractor headquarters and the Contracting Authority, ensure administrative control of the project’s expenses, preparation of invoices with supporting documentation, and the timely delivery of reports. Quality control of reports in terms of contents, layout (standardised) and quality of language is a key aspect of quality assurance that the focal point must ensure.

**6.2 Office accommodation**

Please refer to the point 4.3.3 above.

**6.3 Facilities to be provided by the Contractor**

The Contractor must ensure that experts are adequately supported and equipped. In particular it must ensure that there is sufficient administrative, secretarial and interpreting provision to enable experts to concentrate on their primary responsibilities. It must also transfer funds as necessary to support their work under the contract and to ensure that its employees are paid regularly and in a timely fashion.

The arrangements should allow for maximum flexibility in project implementation provided the Contractor is a consortium. Arrangements offering each consortium member a fixed percentage of the work to be undertaken under the contract should be avoided.

**6.4 Equipment**

**No** equipment is to be purchased on behalf of the Contracting Authority / beneficiary country as part of this service contract or transferred to the Contracting Authority / beneficiary country at the end of this contract. Any equipment related to this contract that is to be acquired by the beneficiary country must be purchased by means of a separate supply tender procedure.

**6.5 Incidental expenditure**

The provision for incidental expenditure covers ancillary and exceptional eligible expenditure incurred under this contract. It cannot be used for costs that should be covered by the Contractor as part of its fee rates, as defined above. Its use is governed by the provisions in the General Conditions and the notes in Annex V to the Contract. Day-to-day translation is not covered under incidentals. It covers:

1. Travel costs and subsistence allowances for missions, outside the normal place of posting (i.e. Kosovo), undertaken as part of this contract. If applicable, indicate if the provision includes costs for environmental measures, for example C02 offsetting;
2. Costs related to the organisation of trainings, including on-the-job trainings and on-site inspections, workshops and seminars including the expenses for participants, their travel to and from the workshop location, printing of training related materials, as well as other training related costs;
3. Designing, translating and printing of project visibility materials, in addition to training materials which should be foreseen in point 2. Each publication material produced by the project needs to be translated in Albanian and Serbian languages respectively. These costs should be treated as incidentals and referred to this part of Terms of Reference;
4. Costs for the study visit (s) in EU-Member State and/or other suitable countries in the region as part of the capacity building activities presented in the ToR. Such costs include travel costs for the participants, accommodation and other related costs to enable a successful study visit. Interpretation/translation services should be envisaged as part of the study visit costs.

The Provision for incidental expenditure for this contract is EUR 151,000. This amount must be included unchanged in the Budget breakdown.

Daily subsistence costs may be reimbursed for missions foreseen in these terms of reference or approved by the Contracting Authority, and carried out by the contractor’s authorised experts, entailing overnight stays outside the expert’s normal place of posting.

The per diem is a flat-rate sum covering daily subsistence costs. These include accommodation, meals, tips and local travel, including travel to and from the airport. Taxi fares are therefore covered by the per diem. Per diem are payable on the basis of the number of nights spent on site by the contractor's authorised experts for missions carried out outside the expert's normal place of posting. The per diem is payable if the duration of the mission is 12 hours or more. The per diem may be paid in half or in full, with 12 hours = 50% of the per diem rate and 24 hours = 100% of the per diem rate.

Any subsistence allowances to be paid for missions undertaken as part of this contract must not exceed the per diem rates published on the website <https://ec.europa.eu/europeaid/funding/about-procurement-contracts/procedures-and-practical-guide-prag/diems_en> at the start of each such mission.

Prior approval by the Contracting Authority for the use of the incidental expenditure is not needed, with the exception of costs for the study visit(s) in EU-Member State and/or other suitable countries in the region.

**6.6** **Expenditure verification**

The provision for expenditure verification covers the fees of the auditor charged with verifying the expenditure of this contract in order to proceed with the payment of any pre-financing instalments and/or interim payments.

The provision for expenditure verification for this contract is EUR 15,000. This amount must be included unchanged in the Budget breakdown.

This provision cannot be decreased but can be increased during execution of the contract.

# REPORTS

## Reporting requirements

Please see Article 26 of the General Conditions. Interim reports must be prepared every six months during the period of implementation of the tasks. They must be provided along with the corresponding invoice, the financial report and an expenditure verification report defined in Article 28 of the General Conditions. There must be a final report, a final invoice and the financial report accompanied by an expenditure verification report at the end of the period of implementation of the tasks. The draft final report must be submitted at least one month before the end of the period of implementation of the tasks.

Each report, except the monthly report, shall consist of a narrative section and a financial section. The financial section must contain details of the time inputs of the experts, of the incidental expenditure and of the provision for expenditure verification. Reporting should also address and include gender related issues, and provide gender-disaggregated data.

To summarise, in addition to the documents, reports and outputs which could be specified under the duties and responsibilities of each key expert above, the Contractor shall provide the following reports:

|  |  |  |
| --- | --- | --- |
| **Name of report** | **Content** | **Time of submission** |
| Inception Report | Analysis of existing situation and work plan for the project. | No later than 6 weeks after the start of the implementation. |
| Monthly Report | Short-listing of implemented activities during the reporting month and envisaging the activities to be implemented during next month. | No later than 2 weeks after the end of each implementation month. |
| Quarterly Progress Report | Short description of progress (technical and financial) including problems encountered; planned activities for the ensuing 6 months accompanied by an invoice and the expenditure verification report. | No later than 1 month after the end of each 3 months implementation period. First Quarterly reporting period starts from the end date of Inception period. |
| Ad-hoc reports | Reports of Short-Term Experts;  Minutes from relevant meetings, in particular of the PSC meetings;  Draft legislation, by-laws and regulations, including definition of various criteria for judges and prosecutors as foreseen in the present ToR;  Internal memos, discussion papers and draft proposals relevant to project implementation;  Any kind of training materials (e.g. curricula design and implementation, relevant teaching material, assessment procedures and results etc.) produced in the framework of the implementation of relevant project activities. | When needed and requested. |
| Draft Final Report | Short description of achievements including problems encountered and recommendations. | No later than 1 month before the end of the implementation period. |
| Final Report | Short description of achievements including problems encountered and recommendations; a final invoice and the financial report accompanied by the expenditure verification report. | Within 1 month of receiving comments on the draft final report from the Project Manager identified in the contract. |

## Submission & approval of reports

Three hard copies of the reports referred to above must be submitted to the Project Manager identified in the contract. The reports must be written in English. The Project Manager is responsible for approving the reports.

The Contracting Authority is responsible for approving the reports and deliverables taking into account eventual comments of the beneficiary and recommendations of the PSC.

No report or any other document shall be distributed to third parties without prior approval by the Contracting Authority. The Contractor shall pay particular attention to the confidentiality of data. All reports will make clear that any opinions expressed therein remain those of the Contractor and do not represent the opinion of the Contracting Authority.

In addition to the above formal reports, the Contractor shall provide such information on project progress as is reasonably required by the Contracting Authority and shall regularly inform the Contracting Authority of political or institutional developments of relevance to the project. The Contractor shall in particular provide the Contracting Authority with electronic and hard copies of:

* Reports of Short-Term Experts;
* Minutes from relevant meetings, in particular of the PSC;
* Draft legislation, by-laws and regulations;
* Internal memos, discussion papers and draft proposals relevant to project implementation;
* Any kind of training or round-table materials produced in the framework of the implementation of relevant Project activities.

All reports must be of high quality and standards. Technical attachments and the final report should be well structured, contain an executive summary, and leave detailed and in-depth subject matter in annexes. Results should be well structured. Recommendations and Action Plans shall be clearly highlighted. Facts in text and data in tables shall be consistent and with cross-references, if necessary. Precise sources of information must be critically assessed. A list of essential contact persons is to be included.

All reports must contain a title page, which should include:

* Project name
* Contract number
* Report title
* Date issued
* Name of the author
* Period covered
* Name and address of the Contractor

All reports must be written in concise and clear English and, if requested, in Albanian and Serbian. The Project Manager is responsible for approving the reports.

# MONITORING AND EVALUATION

This project is subject to monitoring, evaluations and inspections, as the EU Office in Kosovo deems necessary, including potential evaluation carried out by external evaluators. The EC Court of Auditors may inspect any project of the EU Office in Kosovo as and when deemed necessary. The said monitoring and evaluation of the Project will be based on periodic assessment of progress on delivery of specified project results and towards achievement of project objectives.

**8.1 Definition of indicators**

The indicator of Contractor's work will be the level of successful implementation of all activities defined and achievement of objectives set out in the ToR, the work plan and the Logical Framework Analyses which shall contain suitably Objective Verifiable Indicators (OVI) as defined in the Inception Report. These indicators, both quantitative (e.g. measures of quantity, including statistical statements) and qualitative (e.g. judgments and perception derived from subjective analysis), shall be presented in accordance with standard Project Cycle Management practices and use the following evaluation criteria: Relevance; Efficiency; Effectiveness; Impact and Sustainability.

**8.2 Special requirements**

The Contractor must cooperate with any monitoring or evaluation arrangement that is put in place by the Contracting Authority.

The EU Office in Kosovo will use reasonable efforts to assist the Contractor in complying with this obligation, but without incurring expenditure by the EU Office in Kosovo. Therefore, the cost of visibility activities has to be included in the incidental budget.

For the successful management of the project, a detailed visibility plan will be presented by the implementing partner to the EU Office in Kosovo with the necessary activities and budget allocations. The visibility plan will include visibility activities/events such as media events, brochures, leaflets to present project results to a wider audience. A public kick-off with visibility and public information will be organised for each action.

Communication and visibility will be given high importance during the implementation of the project. The implementation of the communication activities shall be the responsibility of the final beneficiary, and shall be funded from the amounts allocated to the project.

The EU Office in Kosovo has developed clear visibility guidelines and ensures that all projects which are implemented in Kosovo are fully in line with these guidelines. Project visibility is also clearly stipulated in all contractual documents whereby the contractors/implementers are obliged to adhere to all EU visibility requirements.

All necessary measures will be taken to publicize the fact that the project has received funding from the EU in line with the guidelines developed by the EU Office in Kosovo, as well as the provisions outlined in the Communication and Visibility Manual for EU External actions.

Visibility and communication actions shall demonstrate how the intervention contributes to the agreed programme objectives and the accession process. Actions shall be aimed at strengthening general public awareness and support of interventions financed and the objectives pursued. The actions shall aim at highlighting to the relevant target audiences the added value and impact of the EU's interventions. Visibility actions should also promote transparency and accountability on the use of funds.

It is the responsibility of the beneficiary to keep the EU Office fully informed of the planning and implementation of the specific visibility and communication activities. The beneficiary shall report on its visibility and communication actions in the report submitted to the IPA monitoring committee and the sectoral monitoring committees.

1. This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence. [↑](#footnote-ref-1)
2. At http://www.giz.de/en/worldwide/298.html [↑](#footnote-ref-2)
3. By legal professional it is meant whoever has a *'relevant professional title*` under Article 1 f) Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 *to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained* [↑](#footnote-ref-3)
4. Long term projects (6 months or more) [↑](#footnote-ref-4)