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Subject: EUROPEAN UNION COMMON POSITION  
Chapter 23: Judiciary and fundamental rights

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## EUROPEAN UNION COMMON POSITION

### Chapter 23: Judiciary and fundamental rights

This position of the European Union is based on its general position for the Accession Conference with Serbia (CONF-RS 1/14), and is subject to the negotiating principles endorsed therein, in particular:

- any view expressed by either Serbia or the EU on a specific chapter of the negotiations will in no way prejudice the position which may be taken on other chapters;
- agreements reached in the course of negotiations on specific chapters, even partial ones, may not be considered as final until an overall agreement has been reached for all chapters;

as well as to the requirements set out in points 23, 24, 28, 42, 43, 44 and 48 of the Negotiating Framework.

The EU encourages Serbia to continue the process of alignment with the *acquis* and its effective implementation and enforcement, and in general to develop already before accession, policies and instruments as close as possible to those of the European Union.

The EU notes that Serbia, in its negotiating position (CONF-RS 2/16) accepts the *acquis* under chapter 23 as in force on 1 January 2016 and that it will be ready to implement it by the date of its accession to the European Union.

## **1. Judiciary**

The EU notes that Serbia is implementing Judicial Reform Strategy for the period 2013-2018 which has to be assessed in complementary with the Action Plan for Chapter 23. The EU also notes that recommendations and proposed solutions from the Functional Review (a detailed assessment conducted by the World Bank) have been reflected in the Action Plan for Chapter 23. Given the scope of the reforms, the EU encourages Serbia to regularly report on and to make an impact assessment of their results at the end of 2018. The EU calls upon Serbia to ensure that all planned measures are implemented without delays and that a sufficient budget for implementing these reforms is set aside. Finally, the EU invites Serbia to ensure that all relevant stakeholders, including civil society and professional organisations are involved in defining further steps in the reform process and in monitoring the implementation of reforms.

### **Independence**

The EU notes that Serbia started the preparations for amending the Constitution in 2017 bearing in mind the Venice Commission's recommendations and European standards. The EU notes the interim measures Serbia proposes to remedy the main shortcomings prior to amending the Constitution. The EU also notes that following these Constitutional amendments, Serbia will amend the Laws on the Organisation of Courts, on Seats and territorial Jurisdiction of Courts and Public Prosecutors' Offices, on Judges, on Public Prosecutor's Office, on the High Judicial Council and on the State Prosecutorial Council as well as the Law on Judicial Academy. The EU underlines the importance for Serbia to prepare these legal amendments with the greatest care, including by consulting the Venice Commission and by involving all relevant stakeholders with the aim to achieve consensus and increase ownership, so as to avoid frequent changes later on and thus ensuring legal stability and certainty. The EU also emphasises the importance for Serbia to ensure a truly inclusive process and to widely consult professional associations and civil society. The EU encourages Serbia to monitor these legal changes and the impact they generate, in particular doing away with political and other influences on the judiciary.

The EU notes that these constitutional changes should also lay the foundations for a future transparent, objective and merit based recruitment system. The EU also notes the first steps Serbia took to develop a fair and transparent system of appointment, evaluation, promotion or demotion of judges and prosecutors and underlines the importance of including training needs in the annual evaluation process. The EU stresses the importance of ensuring that all recruitments, evaluations and promotions of judges and prosecutors (including at senior level) are effectively based on uniform, transparent, objective and nationally applicable criteria. Serbia needs to establish a track record demonstrating that the career advancement of its magistrates is governed by merit and professionalism without political interference. The EU reiterates the attention it attaches to a fully independent judicial system.

The EU takes note of Serbia's plans and initial steps to strengthen the administrative capacity of the Judicial and Prosecutorial Councils. It underlines the importance for Serbia to ensure adequate human and financial resources for the Councils, to select their members in line with established European standards and to make them fully in charge of their own budget. The EU underlines that their work should aim at ensuring an efficient, coherent and transparent judicial administration and notes the measures Serbia has started taking in this respect. The EU also notes that the rules of both Councils will be amended to allow them to react publicly to attempts of political interference. The EU emphasises that political influence over the Councils hinders the fulfilment of their core duty which is to protect the independence of the judiciary. It invites Serbia to effectively address a situation whereby judges often operate in an environment, which makes their work strongly dependent on a public opinion influenced by arbitrary public comments by politicians on the work of courts.

The EU also notes that the Law on seats and territorial jurisdictions of Courts and Prosecutors Offices foresaw the adoption by 31 December 2013 of a special legislation with regards to Serbian judicial institutions in and for Kosovo\*. To date, this legislation has not yet been enacted.

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\* 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.

## **Impartiality and accountability**

The EU takes note of the information provided by Serbia regarding the *impartiality* of the judiciary, in particular ensuring that the court rules for random allocation of cases are clarified and implemented consistently through ICT solutions. Better supervision by the Inspectorates of the two Councils is required to verify their correct implementation. The EU underlines the importance of Serbia demonstrating a track record in this area.

The EU notes the other measures which Serbia is proposing to strengthen the accountability of judges and public prosecutors in particular through the effective implementation of "conflict of interest" rules, the verification of declared assets, the effective implementation of codes of ethics, trainings on ethics, through ensuring an effective disciplinary procedure, functional immunity and dismissal procedures. The EU stresses the importance for the respective Councils to adopt integrity plans for judges and prosecutors, to organise training and to have an adequate inspection capacity, allowing them to act *ex officio* or on the basis of complaints. The EU calls on Serbia to ensure fair and impartial disciplinary procedures. It invites Serbia to ensure regular and effective oversight of the application of ethical standards in the work of magistrates and to actively promote ethical behaviour within its judicial system.

In view of enhancing public confidence in the judiciary, the EU encourages Serbia to ensure that integrity becomes an explicit criterion in appraisals, promotions and senior appointments. The EU invites Serbia to establish a track record of consistent and dissuasive disciplinary measures and their effective enforcement in cases of proven wrongdoings.

## **Professionalism/Competence/Efficiency**

The EU takes note of the information regarding the *professionalism, competence and efficiency* of the judiciary and in particular of the measures aiming at strengthening the Judicial Academy in view of the considerable needs for continuous and initial training of judges, public prosecutors and legal practitioners in the years to come. It underlines the need for extensive training on EU law. It also stressed the importance of strengthening the independence of the Judicial Academy. The EU invites Serbia to effectively implement a quality review mechanism to evaluate the training courses provided, to provide adequate infrastructure, staff and financial resources for the Academy. It urges Serbia to provide for a sustainable and long-term financial solution for the Academy, ensuring that its dependence from donors' support substantially decreases over time. The EU takes note of Serbia's intention to ensure that the assessment of training needs is part of the performance appraisal of judges and prosecutors.

The EU notes Serbia's plan to run a comprehensive analysis of the costs, efficiency and access to justice prior to considering whether further steps are needed in the reform of the court network. It also notes that Serbia would like to further improve the infrastructure of courts but notes that no budget is set aside yet. The EU takes note of the plan to conduct a new functional review at the end of 2017/early 2018 to assess the impact on the effectiveness of the justice system of the reforms conducted so far. The EU would welcome a similar functional review for the prosecution service. The EU takes note of Serbia's intention to adopt a mid-term human resource strategy for the judiciary in 2016, based on an analysis of needs and workload, and bearing in mind possible further changes in the structure of courts. The EU emphasises the importance of a comprehensive human resources policy (for all types of staff working within the judiciary) so as to better respond to the needs of the judicial system, to effectively address workload imbalances and pockets of under-performance, to foster managerial abilities and which promotes a profession with independence and integrity at its heart.

The EU notes that Serbia is implementing a backlog reduction programme, the results of which substantially differ from court to court and takes note of further measures to reduce the length of court proceedings. The EU emphasises the importance of the active involvement of all stakeholders in addressing procedural inefficiencies and of a steady further reduction of the backlogs, which will be a key step in the increased efficiency of the Serbian judiciary. The EU stresses in this respect the need to further explore and promote the use of various alternative dispute resolution mechanisms. The EU also notes the adoption of the new Law on Enforcement and Security and stresses the importance of its effective implementation. The EU underlines that the full respect and implementation of judicial decisions is fundamental for a society based on the rule of law.

The EU notes the steps Serbia intends to take for developing further an e-Justice system, building on the existing automated case management system. The EU stresses the importance of ensuring complete electronic access to court decisions and motivations and their publication within a reasonable time. The EU also underlines the importance for Serbia to develop robust statistics as an indispensable tool for managing the judiciary, including on workload monitoring and addressing staffing needs. The EU notes the measures Serbia plans to ensure more consistency of jurisprudence and underlines the importance of these measures in view of enhancing legal certainty. The EU takes note of Serbia's commitment to monitor the effects on the efficiency of the judicial proceedings of the amended Criminal Procedures Code and to take corrective measures where needed. The EU invites Serbia to also monitor in this respect the implementation of the Civil Procedure Code and the Enforcement Procedure Code.

## **Domestic handling of war crimes**

The EU takes note of the updated information provided by Serbia on the conduct of domestic *war crimes* investigations and trials, including the adoption in February 2016 of a National Strategy for the Investigation and Prosecution of War Crimes as well as the planned adoption of a Prosecutorial Strategy for Investigation and Prosecution of war crimes. It particularly notes that through these strategies and action plans, Serbia intends *inter alia* to ensure that all priority and serious allegations are properly investigated, that suspects are treated equally before the court and that there is an adequate protection of victims and witnesses. The EU underlines the need for meaningful regional cooperation and good neighbourly relations in the handling of war crimes, including the aim to avoid conflicts of jurisdiction. Accordingly, as called for by the relevant February 2016 European Parliament Resolution, all outstanding issues in that regard must be fully resolved. War crimes must be prosecuted without any discrimination.

The EU underlines that further progress in this area requires strong political commitment and that Serbia should avoid giving the impression that anyone is above the law by ensuring impartial handling of cases, confidentiality of the investigation and proportionality of sentences. It urges Serbia to deliver on intensifying and improving the quality of investigations leading to better results of investigative bodies, including in high level cases based on command responsibility. The EU will pay particular attention to the effects the above mentioned strategies/action plans generate.

The EU encourages Serbia to bring victim and witness support in line with EU and international standards and to strengthen the capacity of the witness protection and support service. The EU also reminds Serbia of EU *acquis* on victim's rights and invites it to transpose this *acquis* well in time before accession. The EU recalls that it attaches great importance to continued constructive co-operation with other countries in the region, including on missing persons. Full co-operation with the International Criminal Tribunal for the former Yugoslavia (ICTY) and with the Mechanism for International Criminal Tribunals (MICT) remains essential. The EU therefore underlines the need for Serbia to fully cooperate with the International Criminal Tribunal for the former Yugoslavia and with the Mechanism for International Criminal Tribunals (MICT) including by fully accepting and implementing the ICTY's rulings and decisions.



The EU emphasises the importance of tangible progress in this area, not only to serve the interests of justice in Serbia but also to enhance reconciliation both in Serbia and in the region.

## **2. Anti-corruption**

The EU takes note of the legal framework governing the prevention and fight against corruption and in particular the provisions included in the Criminal Code, the Criminal Procedure Code, the Law on Financing Political Activities, the Law on the Anti-Corruption Agency (ACA), the Law on Free Access to Information of Public Importance, the Law on Public Procurement, the Law on Privatisation, the Law on Seizure and Confiscation of the Proceeds from Crime etc. The EU notes that Serbia is party to the relevant international conventions and legal instruments, in particular the UN Convention against Corruption. The EU notes Serbia's intention to assess its compliance with international anti-corruption standards. The EU notes that amendments to the Law on ACA (aiming at strengthening the role of the Agency as a key institution in the fight against corruption) are still pending and urges Serbia to swiftly adopt and implement the law.

The EU also notes that Serbia is implementing a National Anti-Corruption Strategy and Action Plan for the period 2013-2018. A coordination body for the implementation of the National Anti-Corruption Action Plan has been established. The Ministry of Justice provides administrative support to the Coordination body through the Group for Coordination (the Group). The EU notes Serbia's intention to strengthen the capacity of the Group. The EU also notes that the ACA monitors and reports to the parliament on the implementation of the action plan. The EU invites Serbia to pay particular attention to ACA's reports, to continuously assess the impact of the Strategy and Action Plan and to propose corrective measures where needed. The EU invites Serbia to develop consistent and reliable statistical data on corruption and to use them for policy-making purposes.

### **Preventive action against corruption**

The EU notes the information provided by Serbia as regards the institutional arrangements in place for implementing corruption prevention measures and in particular the ACA. The EU also values the key role of the Anti-Corruption Council as an advisory body to the government on various aspects of the country's anti-corruption policy. The EU invites Serbia to systematically consider and follow up on the policy recommendations and investigative findings of the Council and to constructively and regularly engage with this institution at all levels.

The EU emphasises that Serbia needs to ensure effective and robust institutional capacity for the implementation and monitoring of anti-corruption measures. In this context the EU notes Serbia's commitment to strengthen the ACA in terms of staff, training and equipment. The EU underlines the importance it attaches to ensuring that the Agency has an ambitious and clearly defined mandate, effective powers, a technically competent staff and a pro-active attitude. Equally important is that it is well connected to other relevant authorities and enjoys full independence. The EU notes Serbia's intention to conduct at the end of 2017 an analysis of the implementation of the new Law on the ACA.

The EU takes note of the ACA's mandate on the prevention and sanctioning of conflicts of interest as well as the verification of asset declarations. The EU stresses the importance of a well-functioning asset declaration and verification system. The EU also underlines the importance of an effective mechanism to prevent and sanction conflicts of interest, including protecting the financial interests of the EU in view of the allocation of EU pre-accession funds to Serbia and the expected EU financial support after accession. It notes in this respect Serbia's plan to provide specialised training, webinars and to issue guidelines. The EU underlines the importance of continuous training and awareness raising on the importance of preventing conflicts of interest at all levels, including regular impact assessments.

The EU notes Serbia's intention to amend the Law on political party financing and the role of the ACA in monitoring its implementation. The EU stresses the importance of strengthening the capacity and independence of all bodies responsible for its implementation (e.g. the State Electoral Committee, the State Audit Institution and misdemeanour courts). The EU underlines that political party and electoral campaign financing poses a particular challenge for the fairness of elections and can be a significant source of corruption. It therefore stresses the importance of a full and proper implementation of the law, including effective and dissuasive sanctions in cases of proven wrongdoings.

The EU takes note of Serbia's plan to conduct an analysis of the legal and institutional framework to effectively address cases of illicit enrichment and amend it where needed. The EU also notes the planned analysis in view of amending the Law on Free Access to Information of Public Importance. The EU takes note of Serbia's commitment to fill the existing vacancies in the Office of the Commissioner for Information of Public Importance and Personal Data Protection. The EU underlines that the effective implementation of robust provisions on tackling illicit enrichment and access to information would be considerable assets in the fight against corruption and other forms of economic crime.

The EU notes that Serbia has taken steps to reform its public administration and notes in particular the Public Administration Reform Strategy (2014) and Action Plan (2015), which have among their key objectives the strengthening of the accountability and transparency and the depoliticisation of the public administration. The EU underlines that prevention of corruption requires effective lines of accountability, both between and within institutions, and that managers of public sector institutions have to actively demonstrate their managerial accountability, including responsibility for prevention of corruption. The EU therefore invites Serbia to continue to develop effective internal control systems in public sector institutions with functionally independent internal audit capacity (*see Chapter 32 – Financial control*). The EU further invites Serbia to establish a public administration solely built on professionalism and merit when it comes to recruitment, promotion and dismissals, including of senior managers. It emphasises the importance of the planned depoliticisation measures and of fostering institutional memory, specialised know how and ethical values. It further emphasizes the importance of regular anticorruption training and awareness raising activities, not only for public officials, but also for the citizens. The EU further stresses the importance of ensuring that integrity measures are effectively implemented and if not, that non-compliance is proportionally sanctioned.

The EU notes the entry into force of the new Law on Whistle-Blowers and that training is taking place. The EU invites Serbia to monitor the implementation of the law and to continue efforts to provide easy access for citizens and officials to various complaint mechanisms. The EU takes note of measures Serbia started taking in the field of public procurement, including amending the current Public Procurement Law in August 2015, preparing and adopting a new Law on Public Procurement at the end of 2017 and strengthening the capacity of the Public Procurement Office. The EU underlines the importance for Serbia to enable administrative control authorities to effectively protect the public procurement system from abuses and to ensure that administrative, law enforcement and/or judicial authorities effectively investigate and sanction irregularities (*see also Chapter 5 – Public Procurement.*)

The EU takes note of the measures Serbia plans to effectively prevent and sanction private sector corruption and corruption in the privatisation process. It notes legal and procedural steps and efforts to enhance transparency and accountability. The EU takes note of the fact that Serbia proposes several measures to prevent and fight corruption in particularly vulnerable areas, such as health, taxation, education, police, customs and local self-government. The EU calls on Serbia to assess the effects that these measures have generated and to take remedial action where needed.

The EU notes the measures taken by Serbia to associate civil society representatives to the work on legislation and strategic documents and encourages Serbia to continue to solicit input of civil society organisations for the development and monitoring of anti-corruption measures.

### **Repressive action against corruption**

The EU notes that effectively fighting corruption remains an important challenge for Serbia. The EU takes note of Serbia's plan to amend the section of the Criminal Code regulating the chapter on criminal offenses against the economy so as to align it with EU standards, especially with regard to the criminal offense of "abuse of position of a responsible person".

The EU underlines the importance of having fully independent, efficient and specialised bodies that are well-resourced and equipped in charge of the investigation and prosecution of corruption allegations. The EU notes in this respect that Serbia will conduct an analysis of the organisational structure, capacity and powers of state bodies in the fight against organised crime and corruption in view of subsequently amending the Law on Organisation and Jurisdiction of State Authorities in the fight against organized crime, corruption and other particularly serious criminal offences in 2016, in view of increasing their investigation capacity.

The EU notes that Serbia is implementing a financial investigation strategy and will recruit a team of economic forensics in the Public Prosecutors' Offices. The EU also notes Serbia's commitment to implement the Financial Action Task Force (FATF) recommendations and to strengthen the capacity of the Financial Investigation Department in the Ministry of the Interior. The EU notes Serbia's intention to put in operation a secure electronic communication system allowing mutual access to data bases and exchange of information between (law enforcement) agencies, the prosecution office and other relevant bodies. It urges Serbia to clarify preparatory steps and the budget for this action. The EU highlights the importance of smooth inter-agency co-operation and underlines that electronic access to relevant databases and a secure communication system are indispensable tools for law enforcement bodies. The EU also emphasises the importance of gathering and using reliable statistics on corruption and notes Serbia's planned actions in this respect.

The EU stresses that one of the keys to tackling corruption in general and high level corruption in particular, is that it is seen to be systematically and successfully investigated and prosecuted and that investigations into such crimes are always followed up with financial investigations. The EU highlights the importance of pro-active investigations and effective and dissuasive sanctions commensurate to the gravity of the crime.

The EU takes note of Serbia's commitment to adopt new legislation on asset seizure and to establish and strengthen an Asset Recovery Office (ARO) that will also be in charge of managing confiscated assets. The EU underlines the importance of these measures in the context of the effectiveness of dismantling organised crime groups and stresses the need for adequate legislation, allocating sufficient financial and human resources and providing the necessary specialised training and equipment to the ARO. The EU underlines the importance of providing the necessary specialised training to the future Asset Recovery Office (see also *Chapter 24 – Freedom, Security and Justice*).

The EU notes that Serbia will revise provisions on immunity so as to ensure that they do not hamper the launch of criminal proceedings in corruption and other crimes. The EU also takes note of the measures Serbia proposes to prevent leaks to the media of confidential information regarding investigations. The EU urges Serbia to closely monitor the compliance with these regulations.

The EU underlines that the fight against corruption will require a longer term effort as part of broader societal reforms fostering changes in attitudes and conditioned by a firm political will.

### **3. Fundamental rights**

#### **General**

The EU notes the information provided by Serbia as regards fundamental rights and in particular the provisions enshrined in the Serbian Constitution. It also notes that in general the legal and institutional framework is in place, including the fact that Serbia has ratified a number of international conventions and agreements regarding the protection of these rights. The EU notes that the current institutional framework for monitoring the protection of fundamental rights includes the National Assembly, the Office for Human and Minority Rights, the Ombudsman, ombudsman offices at local level, the Provincial Ombudsman, the Commissioner for Information of Public Importance and Personal Data Protection and the Commissioner for the Protection of Equality. The EU also notes that in this area shortcomings persist in the practical implementation of the protection of fundamental rights. Administrative capacity and financial means to implement fundamental rights remain limited. The EU therefore invites Serbia to continue to work on improving the situation as regards the protection of civil and political, as well as economic, social and cultural rights, including for persons belonging to minorities.

## Human rights

The EU notes Serbia's intention to fill the existing vacancies and to strengthen the Ombudsman through recruiting 43 employees, (including for fulfilling his role as the National Preventive Mechanism (NPM) for torture) as well as the provincial and local ombudsmen services. The EU underlines the importance of having independent, professional and well-resourced Ombudsmen institutions. The EU encourages the government to actively and continuously give public support to the relevant independent human rights institutions. The EU encourages Serbia to effectively implement the recommendations of the *European Committee for the Prevention of Torture and Inhuman or Degrading Treatment (CPT)*.

The EU takes note of the information as regards the situation in the *prisons* and other closed institutions and in particular the ongoing and planned investments in new buildings and improving the living conditions in prisons, including as regards health care and vocational training of convicted individuals. The EU notes also that Serbia plans staff training and improvements of the judicial review over the exercise of the rights of individuals deprived of liberty. The EU further notes the measures Serbia plans to reduce the prison population in particular through the use of alternative sanctions. The EU also notes that Serbia proposes measures to address ill treatment in police custody. The EU emphasises the need to fully align the penitentiary living conditions with European standards. The EU underlines the importance of ensuring *freedom of thought, conscience and religion* and invites Serbia to further ensure state neutrality towards the internal affairs of religious communities. It also stresses the importance of guaranteeing fully in practice the right of persons belonging to minorities to religious services in minority languages.

The EU underlines the importance of the full respect of *freedom of expression* and the independence of media, including safeguarding the physical integrity of journalists. The EU attaches great importance to seeing effective results following the work of the Commission for consideration of the facts obtained during the investigations conducted on the killings of journalists. The EU takes note of the preventive measures put in place for the protection of journalists. The EU also notes the information provided by Serbia on improving the legal and institutional framework guaranteeing media freedoms, the steps to phase out state ownership of the media and to prevent media leaks related to ongoing or planned criminal investigations. The EU notes in particular the planned adoption of an Action Plan for implementing a new multiannual Strategy for the Development of Public Information System, Serbia's intention to establish a registry of the media ownership structure and to monitor the respect of the Ethics Code of journalists. The EU emphasises the importance of media pluralism and of the legal and factual safeguarding of journalistic independence and underlines that freedom of expression and media remains a key indicator of Serbia's readiness to become part of the EU (*see also Chapter 10 – Information Society and Media*).

The EU takes note of the information provided by Serbia as regards *non-discrimination and gender equality*, and notes that Serbia is implementing an Action Plan for the implementation of the Anti-Discrimination Strategy and that it adopted in January 2016 a new National Strategy and Action Plan for improving the status of women and promoting gender equality for the period 2016 - 2020. The EU takes note of the planned amendments to the Law on Prohibition of Discrimination which should be fully in line with the *acquis* and of the plans to adopt a new Gender Equality Law.

The EU emphasises the importance of reinforcing legal safeguards for *persons with disabilities* in specialised institutions in line with international human rights standards and notes the measures Serbia proposes. The EU invites Serbia to ensure that specialised institutions operate in line with the provisions of the UN Convention on the Rights of Persons with Disabilities. It notes in this respect Serbia's commitment to ensure adequate care and living conditions for residents and the parallel development of community-based care services in line with the Convention and underlines that full alignment with the Convention requires that Serbia shows investment in the transition towards community based services that are inclusive for persons with disabilities. (*see also Chapter 19 – Social Policy and Employment*).



The EU notes the measures Serbia plans for improving child protection and enhancing *the rights of the child*, including the adoption of a new Law on Juveniles. It encourages Serbia to pay particular attention to strengthening relevant institutions – including through training – and ensuring better cooperation on child protection issues between the judiciary and the social sector. The EU notes various measures to bolster the child protection system including Serbia's intention to prioritise family support measures when dealing with children in vulnerable situations, in particular improving the system of foster care for children with disabilities. The EU invites Serbia to establish a child-friendly justice system in line with European standards and practices and notes the proposed measures in this respect, including ongoing training.

### **Procedural safeguards**

The EU takes note of Serbia's intention to conduct an analysis on legal alignment with the EU *acquis* and standards in the field of procedural safeguards (procedural rights and victims' rights) and to subsequently amend the criminal procedure code. The EU also notes that the planned Law on Free Legal Aid is still pending. It stresses the importance of establishing a robust *free legal aid* system providing sufficient financial means so as to contribute to guaranteeing effective access to justice for all citizens, in particular for vulnerable groups in the society. The EU invites Serbia to closely monitor its implementation. The EU notes the information provided by Serbia as regards the right to an *effective legal remedy* and its intention to amend its normative framework ensuring the correct application of this right. The EU notes Serbia's intention to assess its degree of alignment with the EU *acquis* on victim's rights and to subsequently align its legislation. It also takes note of Serbia's plan to establish a countrywide network of services for supporting victims, witnesses and injured in all phases of the criminal procedure. The EU emphasises that Serbia should provide access to a basic level of support services and should facilitate police referrals to victim support organisations. The EU invites Serbia to actively promote and monitor the application of these rights and to organise sufficient trainings.

## **Protection of minorities; cultural rights**

The EU stresses the importance of respect for and protection of minorities, in line with the Copenhagen criteria. The EU notes the legal and institutional framework regarding minorities in Serbia and calls for the effective application of Serbia's domestic and international obligations. The EU stresses that planned amendments to the Law on protection of rights and freedoms of national minorities and to the Law on National Councils of National Minorities should be carried out through an inclusive process and ensure that all related sectorial laws are aligned with the new legislation. The EU notes that Serbia adopted in March 2016, in this regard, a dedicated Action Plan on the basis of a process involving representatives of minorities. The EU invites Serbia to use the action plan to effectively implement throughout its territory the recommendations in the Third Opinion issued by the Advisory Committee of the Council of Europe Framework Convention for the Protection of National Minorities. The EU calls on Serbia to fully implement its Action Plan on Chapter 23 in the field of Judiciary and fundamental rights, including the dedicated action plan on the protection of national minorities throughout Serbia, in which Serbia included measures aiming at democratic participation with a view to effective participation of national minorities in the electoral process, appropriate representation in the civil service, the collection of ethnically disaggregated data, the respect of the principle of free self-determination, the functioning of National Minority Councils (including through legal steps) and of Councils of Inter-Ethnic Relations at local level, interinstitutional cooperation, addressing hate crimes, the use of minority languages, the availability of textbooks and the adoption of a dedicated law, the financial viability of media outlets, fostering dialogue among minorities while respecting a policy of non-interference, the adequacy of the Fund for National Minorities and access to religious services in minority languages.

The EU considers that this plan - if consistently and effectively implemented - would lead to guaranteeing in practice the protection of the rights of persons belonging to minorities in an equal manner throughout the country. The EU notes in particular that as regards *education*, a new Law on Textbooks was adopted in July 2015, enabling the provision of textbooks in languages of national minorities and other planned activities aimed at raising the quality of primary and secondary education in and of minority languages. The EU underlines that legislation guaranteeing the right to education in minority languages should be effectively implemented. This should – as indicated in the Serbian dedicated action plan - include elaborating a curriculum for teaching Serbian as a second language, providing learning opportunities of national minority languages in schools and textbooks for the classes in these languages.

The EU underlines that consistent implementation of existing legal provisions on the *right to use minority languages* in contacts with authorities at local level should be ensured through an increase of the relevant administrative capacities and accompanying awareness raising measures. It also invites Serbia to provide *access to media in minority languages* and to support the sustainability of media providing content in minority languages through the implementation of project co-financing mechanisms, the provision of budgetary support for media owned by the National Councils of National Minorities and the increase of minority language content in the Public Broadcasting Service. The EU invites Serbia to *promote equal access to religious services in minority languages inter alia* through a legal analysis and legal changes as necessary, the encouragement of dialogue among the interested Churches and other stakeholders. Finally, the EU invites Serbia to take measures to ensure *adequate representation in public administration* of national minorities through the establishment of appropriate recruitment criteria in its legislative framework. The EU invites Serbia to closely monitor the implementation of this action plan in an inclusive and transparent manner.

The EU notes the particularly difficult situation of the *Roma* minority and the measures Serbia intends to adopt to improve their situation. The EU notes the adoption in March 2016 of the Strategy for the "Improvement of the Position of the Roma in the Republic of Serbia (2015-2025)". It invites Serbia to swiftly adopt the related Action Plan and to ensure its effective implementation through strong coordination of all relevant bodies, also at local level, close cooperation with the Roma community and a realistic budget. Special attention should be given on issuing personal documents, implementing anti-discrimination measures, ensuring compliance with international standards on forced evictions, fostering equal access to health care, to social protection, to education and to the labour market and for improving housing conditions. The EU urges Serbia to ensure a measurable improvement of the situation of the Roma, with a view to reducing and ultimately closing the gap with the rest of the population in particular in areas such as health care, education, employment and access to basic services such as water intended for human consumption and electricity at home.

As regards *internally displaced persons*, the EU notes that Serbia envisages to improve living conditions, to provide permanent housing solutions, to issue civil documentation for undocumented persons and to work on further integrating IDPs in society, in particular the most vulnerable ones. The EU emphasises the particular importance of further improving the social and economic integration of displaced persons.

### **Measures against racism and xenophobia**

The EU notes that in order to ensure adequate prosecution of hate crimes, Serbia is committed to amending its Criminal Code so as to align it with Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law, to provide training and raise awareness and to update its Action Plan for the implementation of the Strategy Against Violence and Misbehaviour at Sports Events (2013-2018) in line with recommendations from an implementation report. The EU underlines the importance to address racism and xenophobia through awareness raising, education, the media etc. and to adequately respond at the political and law enforcement level to racist incidents.

## The protection of personal data

The EU notes Serbia's commitments for alignment with the *acquis* on the protection of personal data. In this regard, the EU invites Serbia to swiftly adopt and implement the new Data Protection Law in line with the EU *acquis*, including the e-Privacy Directive, to ensure the independence as well as the necessary human resources and training for the Office of the Commissioner for Information of Public Importance and Personal Data Protection as well as a wider training effort to make all relevant stakeholders aware of new data protection rules.

For all above areas, the EU invites Serbia to fully recognise the importance of inclusive and evidence-based policy-making and of making the best use of civil society expertise and therefore to engage in inclusive consultations on legislative and policy proposals with civil society and other stakeholders and to ensure systematically access to information.

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In view of the present state of Serbia's preparations, the EU notes that, on the understanding that Serbia has to continue - through inclusive consultations with civil society and major stakeholders as well as appropriate parliamentary scrutiny through procedures that adequately ensure this - to make progress in the alignment with and implementation of the *acquis* covered by the chapter Judiciary and Fundamental Rights, the following *interim benchmarks* would need to be met before the next steps in the negotiation process of the chapter Judiciary and fundamental rights can be taken:

- Serbia ensures an effective, close and permanent monitoring of the implementation of its Action Plan in the field of Judiciary and Fundamental Rights, through a robust and multi-disciplinary mechanism, paying particular attention to the adequacy of human and financial resources, institutional capacity, training requirements, the respect of set deadlines, a real dialogue with civil society and adequate consideration of their proposals and which can trigger corrective measures as required.

## **Judiciary**

- Serbia implements its national Judicial Reform Strategy (2013 – 2018) and Action Plan ensuring full alignment with its Action Plan for Chapter 23. It assesses its impact at the end of 2018 and takes remedial action where needed. Serbia ensures that recommendations from the functional review are followed up on and conducts a new functional review in early 2018.

### **Serbia strengthens the independence of the judiciary, in particular:**

- Serbia adopts new Constitutional provisions bearing in mind the Venice Commission recommendations, in line with European standards and based on a wide and inclusive consultation process. Serbia subsequently amends and implements the Laws on the Organisation of Courts, on Seats and Territorial Jurisdiction of Courts and Public Prosecutors' Offices, on Judges, on Public Prosecutor's Office, on the High Judicial Council and on the State Prosecutorial Council as well as the Law on Judicial Academy.
- Serbia establishes an initial track record of implementing a fair and transparent system based on merit for the management of the careers of judges and prosecutors including recruiting, evaluating and promoting judges and prosecutors based on periodic, professional performance assessment (including at senior level).
- Serbia provides an adequate administrative capacity to the Judicial and Prosecutorial Councils and provides them with their own budget. Serbia establishes an effective mechanism allowing the Councils to react against political interferences and establishes an initial track record of fully respecting judicial decisions and refraining from public comments on the work of courts by officials and politicians.

### **Serbia strengthens the impartiality and accountability of the judiciary. In particular,**

- Serbia puts in place a coherent procedural framework and the necessary ICT tools ensuring random allocation of cases in all courts and prosecution offices. Serbia ensures that the Judicial and Prosecutorial Council have tools to monitor the random allocation of cases.

- Serbia ensures that magistrates are fully accountable providing an initial track record of using the system of asset declarations as an effective means to detect inexplicable wealth, raising awareness on and the strict application of conflict of interest rules, promoting and controlling the respect of codes of ethics, avoiding that the concept of functional immunity is abused, ensuring regular inspections by an independent inspection body of the work of judges and prosecutors.
- Serbia ensures an effective disciplinary system with all the guarantees of a fair trial and the right to challenge the decision and sanctions as well as the effective enforcement of sanctions.

**Serbia improves the professionalism, competence and efficiency of the judiciary. In particular,**

- Serbia ensures that the Judicial Academy adopts a multi-annual work programme, covering human and financial resources and a further development of its training programme. Serbia also provides a sustainable and long term solution for financing the Judicial Academy, applies a quality control mechanism and regularly and effectively assesses the impact of the training. Serbia ensures that training needs are evaluated as part of the performance assessments of judges and prosecutors.
- Serbia conducts a comprehensive assessment of its court and prosecution network with a focus on costs and allocated resources, efficiency, workload and access to justice prior to taking any further steps in the development of the court and prosecution network.
- Serbia adopts and implements a human resources strategy for the entire judiciary, leading to a measurable improvement in the workload spread, efficiency and effectiveness of the justice system.
- Serbia implements its national backlog reduction programme - including through promoting the use of various alternative dispute resolution mechanisms - and establishes an initial track record of a sustainable decrease in the backlog of court cases.

- Serbia adopts and implements the new Law on Enforcement and Security and establishes an initial track record of an improved clearance and recovery rate of enforcement proceedings in civil and commercial cases. Serbia monitors the enforcement system and develops further measures where relevant.
- Serbia develops and rolls out a coherent e-Justice system allowing systematic automated information exchange across the court system and prosecution offices, the electronic assignment of cases and the development and use of a sound statistical capacity (in line with CEPEJ guidelines on judicial statistics) to allow inter alia the measurement of the average duration of court proceedings. Serbia ensures sufficient training for the users of the system.
- Serbia ensures a qualitative improvement of the consistency of jurisprudence, including by ensuring easy access to jurisprudence for all courts through an electronic database and their publication within a reasonable amount of time.

**Serbia improves the handling of domestic war crimes cases. In particular,**

- Serbia implements effectively the measures in its National strategy in support of investigation, prosecution and adjudication of war crimes. Serbia monitors its implementation, assesses its impact and revises the strategy in parallel.
- Serbia adopts and implements effectively a Prosecutorial strategy for the investigation and prosecution of war crimes; Serbia monitors its implementation and assesses its impact, as necessary and appropriate.
- Serbia strengthens its investigative, prosecutorial and judicial bodies including ensuring a more proactive approach and the confidentiality of investigations, providing for training for new and current staff members, improving its witness protection and victim support system and ensuring victims' rights and access to justice without discrimination.



- Serbia effectively demonstrates adequate investigations of allegations and equal treatment of suspects avoiding giving the impression that anyone is above the law, regardless of their nationality or ethnicity or that of the victims; Serbia provides an initial track record of investigation, prosecution and adjudication of a higher number of cases including against high level suspects as well as of cases transferred from ICTY to Serbia. Serbia ensures proportionality of sentences and a sentencing policy in line with international criminal law standards.
- Serbia cooperates constructively with neighbouring states in tracing and identifying/ascertaining the fate of missing persons or their remains, including through swift exchange of information. Serbia engages in meaningful regional cooperation and good neighbourly relations in handling of war crimes by avoiding conflicts of jurisdictions and ensuring that war crimes are prosecuted without any discrimination. All outstanding issues in this regard must be fully resolved.
- Serbia fully co-operates with the International Criminal Tribunal for the former Yugoslavia (including by fully accepting and implementing its rulings and decisions), and with the Mechanism for International Criminal Tribunals.

### **Fight Against corruption**

- Serbia implements the Action Plan accompanying the National Anti-Corruption Strategy for the period 2013-2018. It strictly monitors the implementation and takes remedial action where needed. Serbia conducts an impact assessment in 2018 of its results

### **Serbia strengthens prevention measures in the fight against corruption. In particular,**

- Serbia conducts a comprehensive assessment of its legislation comparing it against the EU *acquis* and the United Nation's Convention against Corruption and amends its legislation where needed. Serbia follows up on all GRECO recommendations.

- The Serbian government engages in a constructive relationship with the Anti-Corruption Council, seriously considers the latter's recommendation and takes them as much as possible into account.
- Serbia adopts the new Law on the Anti-Corruption Agency (ACA) providing it with a clear and strong mandate. Serbia ensures that ACA continues to enjoy the necessary independence, receives sufficient financial and human resources as well as training and is well connected to other relevant authorities (including to their databases). Serbia ensures that bodies that fail to report and cooperate with ACA are held accountable.
- Serbia provides an initial track record showing an increase in the number of detected and resolved conflict of interest cases, including deterrent sanctions. Serbia provides trainings and raises awareness so as to ensure that the concept is well understood at all levels.
- Serbia provides an initial track record of effective implementation of the asset declaration and verification system, including dissuasive sanctions for non-compliance and appropriate follow up measures (including through criminal investigations where relevant) in cases where the reported assets do not correspond to the reality.
- Serbia amends its Law on Financing of Political Activities and reinforces the independence and administrative capacity of relevant supervisory authorities, in particular the State Audit Institution and the Republic Electoral Commission. Serbia provides an initial track record on the proper implementation of the law, including deterrent sanctions where required.
- Serbia amends its law on Free Access to Information of Public Importance, it strengthens the administrative capacity of the Office of the Commissioner for Information of Public Importance and Personal Data Protection, provides training on handling access to information requests and an initial track record of improved access to information, including with regard to privatisation deals, the activities of state owned enterprises, public procurement processes, public expenditures and donations from abroad to political parties.

- Serbia recruits and manages the career of civil servants on the basis of clear and transparent criteria, focusing on merits and proven skills. Serbia develops and applies a mechanism for the effective implementation of the Code of Conduct for civil servants. Serbia provides an initial track record of effective sanctions in cases of breaches of this Code. Serbia ensures prevention of corruption through systematic introduction of effective internal control systems and strengthening managerial accountability in the public sector.
- Serbia effectively implements the new Law on Whistle-Blowers and monitors its implementation.
- Serbia implements and assesses the impact of measures taken to reduce corruption in vulnerable areas (health sector, taxation and customs, education, local authorities, the privatisation process, public procurement and the police), takes remedial action where needed and establishes an initial track record of a measurable reduction of corruption in these areas.

**Serbia strengthens repressive measures in the fight against corruption. In particular,**

- Serbia makes an analysis of its organisational structures and bodies prior to amending the Law on Organisation and Jurisdiction of State Authorities in the fight against organised crime, corruption and other particularly serious criminal offences. Serbia pays particular attention to capacity building in the prosecution service and the police and ensures the necessary financial and human resources and training. It substantially improves inter-agency co-operation and intelligence exchange in a safe and secure manner.
- Serbia establishes an initial track record of efficient and effective investigations (incl. financial investigations), prosecution, convictions and asset confiscations in corruption cases, including high level cases. Serbia applies a zero tolerance policy towards leaks related to planned or ongoing corruption related investigations and ensures that these are sanctioned should they occur.

- Serbia revises its Criminal Code and provides an effective solution for dealing with economic crime cases and in particular the criminal offense of "abuse of position of a responsible person".

### **Fundamental rights**

#### **Serbia strengthens the effective application of human rights. In particular,**

- Serbia further amends the law on the Ombudsman so as to strengthen its independence in line with international standards Serbia strengthens the institutional capacity of its ombudsman structures, including its role as National Preventive Mechanism for Torture. Serbia actively and continuously gives public support to relevant independent human rights institutions.
- Serbia implements all recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment (CPT) and invests in improving infrastructure and living conditions in prisons (including healthcare), detention centres and psychiatric institutions. Serbia actively works on reducing overcrowding and conducts training and awareness raising on the rights of persons in detention.
- Serbia fully respects the independence of media, applies a zero-tolerance policy as regards threats and attacks against journalists, and prioritising criminal investigations should such cases occur. Serbia provides an initial track record of progress in the work of the "Commission for consideration of the facts that were obtained in the investigations that were conducted on the killings of journalists" including further investigations, effective prosecution and deterrent sanctions for perpetrators.
- Through the implementation of the Strategy for the Development of Public Information System, Serbia takes active measures for reforming its media landscape thus creating an enabling environment for freedom of expression, based on transparency (including on ownership of media), integrity and pluralism.

- Serbia implements the Strategy and action plan on anti-discrimination and adopts amendments to the Law on Prohibition of Discrimination in line with the EU *acquis*. Serbia ensures adequate institutional capacity for their implementation. Serbia monitors closely the impact of these two instruments - including as regards the full respect of the rights of LGBTI persons - and takes remedial action where required.
- Serbia adopts a new Law on Gender Equality and a new National Strategy and Action Plan for Combating Violence against Women in Family and Partner Relationships. Serbia ensures adequate institutional capacity for their implementation as well as for implementing the National Strategy and Action Plan for improving the status of women and promoting gender equality. Serbia monitors closely their impact and takes remedial action where required.
- Serbia steps up the respect of rights of the child, with particular attention for socially vulnerable children, children with disabilities and children as victims of crime. Serbia actively works on reducing institutionalisation to the benefit of increasing family care solutions. Serbia adopts and implements a Strategy and Action Plan for preventing and protecting children from all forms of violence. Serbia establishes a child friendly justice system, including through amending and implementing the Law on juveniles, improving the work of the Juvenile Justice Council, providing training on dealing with juvenile offenders, improving alternative sanctions for juveniles and measures to reintegrate juvenile offenders back into society.
- Serbia improves the situation of disabled persons, inter alia through the full implementation of the UN Convention on the Rights of Persons with Disabilities and closely monitors its results.

**Serbia improves alignment with the EU *acquis* and international standards regarding procedural safeguards. In particular:**

- Serbia adopts a new Law on Legal Aid and establishes a well-resourced legal aid system. Serbia amends its legislation (including the Criminal Procedure Code) so as to align it with the EU *acquis* on procedural rights and on victim's rights.

- Serbia provides the necessary training and monitors the implementation of EU compatible procedural safeguards legislation and takes remedial action where needed.

**Serbia steps up the protection of minorities and cultural rights. In particular,**

- Serbia implements its legal framework on the rights of persons belonging to minorities as well as "The action plan for the realisation of the rights of national minorities" in its entirety, contributing to the effective and equal implementation throughout its territory of the recommendations of the Advisory Committee of the Council of Europe Framework Convention for the Protection of National Minorities. Particular emphasis is put on education, the use of minority languages, access to media and religious services in minority languages and adequate representation in the public administration. Serbia closely monitors its implementation in an inclusive and transparent manner, assesses its impact by the end of 2018 and reports on progress.
- Serbia adopts and implements the action plan (accompanying the new strategy) to improve living conditions of Roma, with a special focus on registration, comprehensive measures on non-discrimination, compliance with international standards on forced evictions, guaranteed socio-economic rights, education, health, employment and housing, including access to basic public services (water and electricity). Serbia ensures a measurable improvement of the situation of Roma, reducing the gap with the rest of the population in the above areas.
- Serbia improves the situation of refugees and IDPs by providing permanent housing solutions and improving living conditions, improving their access to justice through free legal aid, provision of civil documentation to undocumented persons ensuring their full access to rights and fostering their social and economic integration.

**Serbia takes steps to align its domestic legal framework with the *acquis* and international standards against racism and xenophobia. In particular,**

- Serbia amends its Criminal Code so as to fully align it with the *acquis* and ensures also in practice an effective criminal law approach towards certain forms and expressions of racism and xenophobia. Serbia undertakes measures aimed at increasing tolerance among citizens, including through training and awareness raising on countering hate crime and ensuring effective investigation of cases. Serbia implements the Strategy and Action Plan against Violence and Misbehaviour at Sports Events (2013-2018).

**Serbia ensures alignment with EU data protection standards, in particular,**

- Serbia adopts and implements a new Law on Personal Data Protection in line with the EU *acquis*, monitors its implementation and takes remedial action where needed. Serbia also provides training and strengthens the independence, resources and administrative capacity of the Commissioner for Information of Public Importance and Personal Data Protection.

**For all above areas, Serbia fully recognises and exploits the benefits of civil society expertise and therefore engages in a real and systematic dialogue with civil society**

Monitoring of progress in the alignment with and implementation of the *acquis* will continue throughout the negotiations. The EU underlines that it will devote particular attention to monitoring all specific issues mentioned above – including through peer-review missions - with a view to ensuring Serbia's administrative capacity. In line with the provisions of the negotiating framework, the Commission indicates its intention to propose updated interim benchmarks, whenever it is duly justified. In this respect, any measures to adjust pre-accession assistance may only be taken in accordance with applicable rules and procedures. Particular consideration needs to be given to the links between the present chapter and other negotiation chapters. A final assessment of the conformity of Serbia's legislation with the *acquis* and of its implementation capacity can only be made at a later stage of the negotiations. In addition to all the information the EU may require for the negotiations in this chapter and which is to be provided to the Conference, the EU invites Serbia to provide regularly detailed written information to the Stabilisation and Association Council on progress in the implementation of the *acquis*.

In view of all the above considerations, the Conference will have to return to this chapter at an appropriate moment.

Furthermore, the EU recalls that there may be new *acquis* between the opening and the conclusion of the negotiations.

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