This action is funded by the European Union of the Commission Implementing Decision on the Annual Action Programme 2017 part II and 2018 part I in favour of Afghanistan to be financed from the general budget of the Union

**Action Document for Incentivising Justice Sector Reform in Afghanistan**

**Annex 3**

<table>
<thead>
<tr>
<th>INFORMATION FOR POTENTIAL GRANT APPLICANTS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>WORK PROGRAMME FOR GRANTS</strong></td>
</tr>
<tr>
<td>This document constitutes the work programme for grants in the sense of Article 128(1) of the Financial Regulation (Regulation (EU, Euratom) No 966/2012) in the following sections concerning calls for proposals: 5.3.1</td>
</tr>
</tbody>
</table>

| 1. Title/basic act/CRIS number | Incentivising Justice Sector Reform in Afghanistan  
CRIS number: ACA/2017/39915  
financed under Development Cooperation Instrument |
| 2. Zone benefiting from the action/location | Afghanistan  
The action shall be carried out at the following location: Afghanistan country-wide, focus on Kabul |
| 4. Sector of concentration/thematic area | MIP - Sector 3: Policing and Rule of Law (DAC 152) |
| 5. Amounts concerned | Total estimated cost: EUR 31 500 000  
Total amount of EU budget contribution EUR 31 000 000 |
| 6. Aid modality(ies) and implementation modality(ies) | Project Modality:  
Indirect management with the World Bank (AA) 24 000 000 EUR  
Direct management – grants 4 500 000 EUR  
Direct management - services 2 500 000 EUR |
| 7 a) DAC code(s) | 151 - Government and civil society  
15130 - Legal and judicial development |
| b) Main Delivery Channel | World Bank - 44000 |

[1]
In line with the 2014-2020 Multi-annual Indicative Programme for Afghanistan, the overall objective of this Action is to improve access to justice for all and ensure judicial integrity and independence through empowered, effective and transparent justice institutions. This will be achieved by facilitating an Afghan-led, long-term reform process of the prosecutorial system through incentivising reform measures within the Afghan Attorney General's Office (AGO). The Afghan formal justice system, including the AGO, is currently negatively affected by a lack of capacity and widespread corruption. This situation causes low levels of public trust in judicial institutions and actors. Donor support to the justice sector has been fragmented and overall hampered by a protracted lack of political will to effectively address these challenges. Thus, the positive impact of development initiatives has so far been limited. The establishment of the current government in 2014 has led to increased political will to address these issues. This includes the appointment of a new Attorney General (AG) in early 2016, who has demonstrated leadership and the will to reform the AGO. This positive momentum needs to be utilised through support to an Afghan-led and -owned reform process. To ensure the sustainable implementation of necessary reform measures, an innovative incentive-based approach is proposed, placing at its core ownership by the AGO and Afghan civil society as the principal rights holder in the Afghan justice system.

Against the backdrop of current justice sector reform efforts, the incentive funding will be linked to time-bound reform benchmarks. The initial set of tentative benchmarks, which is in line with reform priorities highlighted by the AG and the President in their ongoing dialogue with the EU, will be refined further during a consultation process between the
AGO and civil society, with support from the Office of the President and the EU. Close coordination of the benchmarks with other donors’ activities in support to the AGO will be ensured to maximise synergies. The incentive funding will be implemented through an Administration Agreement with the World Bank, following the signature of a Financing Agreement. Subject to fulfilment of the established benchmarks, funds will be channelled through the World Bank's Afghanistan Reconstruction Trust Fund (ARTF) Ad hoc Payments facility, providing on-budget support.

Besides civil society's involvement in the consultation process, CSOs will also be at the core of the Action through a parallel grant scheme implemented through a Call for Proposals. The scheme will fund CSOs to provide legal aid to victims of crimes throughout Afghanistan, which besides improving access to justice for Afghan citizens, will allow CSOs to carry out their "watchdog function" regarding government service delivery and observe changes and improvements in the AGO's service provision to the Afghan public as the implementation of the agreed reform measures proceeds.

1 CONTEXT
1.1 Sector/Country/Regional context/Thematic area

Afghanistan suffers from a lack of efficient and effective public service delivery, coupled with corruption, which has contributed to the revival of parallel mechanisms of governance at subnational level. Local criminal organisations as well as insurgency groups rely on and fill this vacuum of governance with reasonable success. This is particularly true for the justice sector, where the lack of accessible, affordable, independent and impartial judicial institutions contributes to public mistrust of the formal justice system and the reliance on informal justice mechanisms, especially in rural and remote areas, which are often in contradiction to the values reflected in the national legal framework and inherently discriminatory against women and other vulnerable groups. The situation is further exacerbated by factors such as security concerns, which leave several districts outside Kabul without formal justice institutions, as judges and prosecutors refuse to work there; the predominance of conservative views within the judicial system, that even where formal justice institutions are present do not allow for a conducive environment where women and children victims of crimes can receive justice; and widespread corruption that ultimately makes the due process of law a matter of who has more influence or money - further exacerbating gender inequality in an environment where women do not command resources or influence.

According to Transparency International's (TI) Global Corruption Barometer, the formal justice sector is the sector most severely affected by corruption in Afghanistan. In 2015, a joint study by TI and Integrity Watch Afghanistan (IWA) rated the judiciary as the most corrupt institution in the country. The frequency of bribes paid to officials in the judiciary and courts increased to 63% in 2015, compared to 55% in 2014, according to an annual survey conducted by The Asia Foundation. Furthermore, the National Corruption Survey

---

1 Aarya Nijat, Governance in Afghanistan: An Introduction, AREU, March 2014. p. 9
3 Transparency International and Integrity Watch Afghanistan, National Integrity System Assessment; Afghanistan 2015 p. 15
2016 published by IWA shows that Afghans consider corruption the third-most serious
problem facing the country, after insecurity and unemployment. Two thirds of Afghan
citizens think that the government did not do enough in the last two years to address
corruption, and 46% think that the international community is not interested in fighting
corruption either. Because of corruption, 72% of Afghans do not trust local public services
anymore and 41% prefer to refer their issues to the Taliban instead of government institutions.
Finally, more than 50% of Afghans visiting courts or prosecutors' offices were asked to pay a
bribe in 2014-2016, leading to a staggering estimated USD 2.9 billion annually being paid in
bribes during the same two-year period.5

In February 2017, the Independent Joint Anti-Corruption Monitoring and Evaluation
Committee (MEC)6 presented its draft special report “Vulnerability to Corruption Assessment
(VCA) in the Afghan AGO”, highlighting both the positive impact of the new AG on the
organisation since his appointment in early 2016, and a number of persisting structural
deficiencies of the AGO that induce corruption and organisational ineffectiveness. The draft
VCA points to poor human resources recruitment procedures and management, lack of
reliable data on individual cases, poor coordination between investigative authorities,
inadequate security at prosecutors' offices at provincial and district level, and lack of
competence and qualifications of prosecutors as the basis for bribes and corruption. The
report recommends a number of reforms to effectively address the identified vulnerabilities.
The proposed reforms relate to capacity, cooperation and accountability, ultimately indicating
that the main challenge lies in effectively implementing the necessary changes. The report
calls for strong governance structures and transparent and accountable human resources
management, legal amendments of the Law on the Structure and the Organisation of the
AGO, and the availability of financial resources for the organisational and procedural changes
required, as well as close monitoring and evaluation of the reform process.

As illustrated by the various surveys and assessments outlined above, official justice actors
through the years have established themselves as counter-role models promoting the belief
that the government does not serve the Afghan people, but rather its own interests. This plays
into the hands of the insurgency, further destabilising Afghanistan. The current political
leadership has engaged into a structural reform process in the justice sector and the initiatives
taken by the President have led towards the emerging of a window of opportunity for effective
change, which the EU intends to capitalise through the proposed Action.

1.1.1 Public Policy Assessment and EU Policy Framework

The Afghan Constitution provides a progressive foundation for the legislative framework,
which overall guarantees fundamental Rule of Law principles, including judicial
independence. However, often the legal framework remains largely inapplicable due to
widespread corruption within the justice system itself and in particular among judges and

---

5 Integrity Watch Afghanistan, National Corruption Survey 2016, https://iwaweb.org/national-corruption-corruption-survey-
2016/
6 MEC is an independent agency, a joint Afghan-international monitoring and evaluation committee not subject to direction
from either the Afghan government or from the international community. It was created by Pres. Decree 61 of 18/3/2010, as
amended by Pres. Decree 115 of 18/9/2016, after the need for an autonomous anti-corruption monitoring and evaluation body
was identified at the London and Kabul Conferences. www.mec.af
prosecutors who are supposed to enforce the law. Therefore, significant reforms are necessary to ensure that legal principles translate into fair and equal access to justice for all Afghan citizens.

Anti-corruption and the strengthening of the Rule of Law are one of the priorities of the Afghan government, and in particular of President Ghani. Positive steps to fight corruption have been taken, such as the review of the Kabul Bank fraud case, the dismissal of a number of allegedly corrupt officials, and the recent establishment of a dedicated Anti-corruption Justice Center (ACJC) under responsibility of the AG, to deal with high-profile and particularly sensitive corruption cases with support from a number of international donors aiming at establishing judicial professionalism and independence of proceedings.

Anti-corruption and Rule of Law was also a key focus area of the 2015-16 short-term deliverables under the Self-Reliance through Mutual Accountability Framework (SMAF) agreed between the government and the international community in September 2015. A refreshed version of the SMAF covering the years 2017-2018 was adopted at the Brussels Conference 2016, including deliverables on Anti-corruption, Governance, Rule of Law and Human Rights. One of the key short-term deliverables under the 2015-2016 SMAF has been the launch of a Justice Sector Reform Plan, which the government finalised and approved on 27 December 2016 under the title National Justice and Judicial Reforms Programme. While admittedly hampered by fragmentation and rivalries between different government parties and institutions, the Programme aims to improve access to justice and Rule of Law and strengthen the formal justice system especially in rural areas. Setting reform benchmarks for the whole justice sector, the plan makes reference to different entities and institutions including the AGO. The reform benchmarks regarding the latter are aimed at improving and strengthening its human resources management system, recruitment regulations and processes, accountability and transparency mechanisms, staff capacity building, and the prosecutors' Pay and Grading Scheme. Although the Reforms Programme overall lacks clarity and details on means, modalities and timelines for the envisaged reforms, it spells out the need for change, thus contributing to set the political momentum. As a follow-up to the Reforms Programme, the AGO has issued an Action Plan for its implementation in March 2017. While suffering from similar shortcomings as the Reforms Programme, the Action Plan can still serve as an important basis for the implementation of reform measures, as it enumerates a list of activities divided into different areas for reform, attributes specific responsibilities within the AGO's organisational structure for each envisaged reform activity, and sets out expected results.

Within the context of justice sector reform, gender issues have received increasing attention in the last years, and Afghanistan has issued policies and legislation to uphold the international legal and political commitments it has made, first of all through the ratification of the CEDAW7, which has led to the adoption of the Law for the Elimination of Violence Against Women (EVAW Law). In addition to this legislation, a set of government policy programmes addresses key issues of gender equality, from women's participation to government to anti-harassment regulations, in a comprehensive manner.8 So far however, the implementation of this policy framework and the enforcement of the EVAW Law remain far from ensuring

---

7 Convention for the Elimination of all forms of Discrimination Against Women.
8 Afghanistan National Peace and Development Framework; Self-Reliance through Mutual Accountability Framework; and National Priority Programmes
gender equality and affording protection and social justice to women, further confirming the overall weakness of Rule of Law in the country. As repeatedly pointed out by representatives of Afghan civil society, “whether or not laws afford protection for women's rights depends not only on how the laws are worded, but also on the social relations of the context in which they are to operate”.

In line with the focus on Rule of Law under the MIP for Afghanistan 2014-2020, the EU currently supports the strengthening of the Afghan justice system through its contribution to the Justice Service Delivery Project (JSDP) under the World Bank's ARTF. The JSDP has been designed to provide on-budget assistance to the Afghan justice institutions to improve information-sharing between formal and community-based dispute resolution mechanisms, expand the existing state legal aid system while enhancing its effectiveness and sustainability, provide training to prosecutors and judges, foster legal awareness among the population, develop provincial justice reform plans, and address priority infrastructure needs.

While some of these activities have been implemented successfully, others have been hampered by a lack of political will and leadership within the relevant justice institutions, which has resulted in a significant downsizing of the JSDP after the 2015 Mid-Term Review, mostly due to the inability of the government to use the available funding. This Action is based on lessons learned from the JSDP and other projects in the Rule of Law sector, departing from the implementation of project activities that have so far provided limited impact, and instead proposing an innovative, incentive-based approach centred around the establishment of time-bound institutional reform benchmarks established by the AGO through a consultation process including Afghan civil society, facilitated by the EU coordinated with other donors’ activities.

1.1.2 Stakeholder analysis

The main formal judicial institutions in Afghanistan are the MoJ, the Judiciary, and the AGO. The latter is part of the Executive, but, as established by the Constitution, independent in its proceedings, which include the mandatory investigation and prosecution of crimes according to Art. 134 of the Afghan Constitution. While Constitutional change goes beyond the scope of this Action, it has to be noted that the current legal basis may raise concerns on whether a judicial institution appointed by the Executive can by definition exercise its prerogatives free from political influence. The internal functioning, structure and recruitment of AGO is regulated by the 2013 Law on the Structure and Organisation of the AGO.

The AGO encompasses a central administration in Kabul as well as provincial offices in each of the 34 provinces of Afghanistan, and its annual budget amounts to around USD 20 million (approx. USD 18 million for operations and USD 3 million development). Due to a lack of transparent human resources planning, recruitment and management, precise staff demographics are difficult to ascertain, and relevant estimates and figures vary. A recent SWOT analysis of the AGO mentions that out of 5200 AGO staff 1836 are prosecutors (referred to within the AGO as "technical staff"), with the remainder being admin and support


MEC, draft AGO VCA 2017 report, p. 53
staff.\textsuperscript{11} The MEC's draft VCA refers to varying reports of staff numbers between 2,052 and 2,913 prosecutors\textsuperscript{12}, while informal estimates of staff of the International Development Law Organization (IDLO) conducting an ongoing assessment of the training needs of prosecutors point to a real number of only approx. 1600 serving prosecutors\textsuperscript{13}.

As outlined in section 1.1, the Afghan formal justice sector is severely affected by corruption, a lack of qualified staff, and ineffectiveness, and therefore publicly discredited. Although the law foresees sanctions for prosecutors and judges for misconduct and incompetence, such provisions are rarely applied. In spite of substantial training efforts by international donors, both Supreme Court and AGO staff lack professional, legal, technical and administrative knowledge due to their inadequate educational background\textsuperscript{14}, aggravated by recruitment procedures that throughout the years have not considered qualifications and merit.

Women constitute only around 5\% of all AGO staff.\textsuperscript{15} Despite an increase in the number of female graduates from Afghan law and Sharia faculties over the last decade, women are also still severely underrepresented as prosecutors, with only 142 out of 1836 prosecutors (7.7\%) being female, according to government data.\textsuperscript{16} Past abuses at the workplace have contributed to the vulnerability of female prosecutors who have been recruited and retained by the AGO. The Civil Society Position Paper presented at the London Conference for Afghanistan in 2014 therefore insisted that the Afghan government must “recognise the discrimination of marginalised groups, in particular women, and must do more to encourage women to work in the justice sector”\textsuperscript{17}, while the Civil Society Position Paper presented at the Brussels Conference in 2016 reiterated this point and stressed the need to ensure women’s inclusion in the justice sector through the establishment of a special division in the AGO and the Office for Prevention of Discrimination and Violence against Women.\textsuperscript{18}

The current Attorney General has been appointed in February 2016 within the context of increased political will to address shortcomings in public service delivery and specifically corruption demonstrated by the current government since its establishment in 2014. Several promising steps have been taken by the AG since his appointment. Crucially, for the first time since the establishment of the AGO in 1964, the Attorney General reached out to Afghan civil society, encouraging CSO representatives to hold his institution accountable to the people it should serve. The AG also launched the merit-based selection and recruitment of 100 qualified young graduates in prosecutors' positions and increased the proportion of female prosecutors. While the rather short timeframe of this recruitment process may raise concerns

\textsuperscript{11} National Unity Government (NUG) 2016 Progress Report on Women's Status and Empowerment and NAP 1325, p. 25
\textsuperscript{12} MEC, draft AGO VCA 2017 report, p. 15
\textsuperscript{13} Within the framework of the Justice Sector Support Programme (JSSP) funded by the US State Department's Bureau for International Narcotics and Law Enforcement Affairs (INL), IDLO is currently conducting a comprehensive Knowledge, Perceptions and Skills assessment of the AGO's prosecutors, testing and assessing all prosecutors through a process endorsed and supported by AG Hamidi and Deputy AG Argun.
\textsuperscript{14} Currently two thirds of Afghan prosecutors have no more advanced professional qualification than a high school certificate, cfr CPAU: The AGO's 100 Days, July 2016, p. 5
\textsuperscript{15} According to a recent SWOT analysis of the AGO, 252 staff out of a total of 5200 staff (prosecutors and admin/support staff) are female. NUG 2016 Progress Report on Women's Status and Empowerment and NAP 1325, p. 25
\textsuperscript{16} NUG 2016 Progress Report on Women's Status and Empowerment and NAP 1325, p. 25
regarding the quality of the selection procedure, it is nonetheless notable that this has been the first-ever selection of prosecutors requesting the presentation of CVs and academic qualifications, involving written and oral tests, and rejecting unsuitable candidates.

Despite these promising developments, the capacity of the AGO to effectively manage human resources and merit-based recruitments in an objective and transparent manner remains weak. At present, the institution lacks a human resource management, planning and surveying system that would allow it to align new recruitments with a mapping and forecast of technical, geographical and specialist needs. In the absence of a system for open competition, staff have been and potentially continue to be selected based on personal relations and financial payments rather than qualification.

Poor personal safety, especially in the provinces, leads to reluctance of prosecutors to take up their assigned posts in certain locations. Prosecutors' offices in these locations remain unstaffed, with access to justice and Rule of Law becoming unavailable to citizens. Combined with comparatively low salaries, this insecurity further makes prosecutors prone to bribery and outside influence. Unlike the Supreme Court, the AGO has not conformed itself to the rules and reforms of the Afghan Independent Administrative Reform and Civil Service Commission due to resistance of its previous leadership. This resistance has been justified by the claim that prosecutors are not civil servants, and therefore the Civil Servant Law should not be applicable to them. More likely however, the refusal is based on the desire of certain longstanding senior AGO staff not to be subjected to the rules and regulations on recruitment and professional conduct imposed by the Civil Service Law. Consequently, the AGO's human resources management system continues to be riddled with corruption, including external influence on hiring decisions.

Aware of the challenges outlined in this section, the AG, supported by the President, is committed to the implementation of a long-term reform process, whose design is to be realised via a consultation process between the AGO, representatives of other justice institutions and the wider government, and Afghan civil society.

Afghanistan's civil society is varied and active, and takes a strong stance to efficiently and effectively implement its "watchdog function" regarding government service delivery, transparency and accountability. Numerous specialised CSOs are active in the areas of justice, Rule of Law and anti-corruption and have repeatedly pointed out the weaknesses of the justice system and their negative impact on the overall stability of the country. Existing challenges within the justice system and possible ways to address them have been comprehensively analysed by CSOs through public surveys, research assessments, and applied field work as service providers for legal aid and support to users of legal services on national and local levels.

1.1.3 Priority areas for support/problem analysis

The challenges outlined above translate into the following main deficiencies:

19 MEC, draft AGO VCA 2017 report, p.7
- Lack of a merit-based and transparent Human Resources recruitment and management system
- Lack of recruitment mapping and employment accountability: Nepotism and clientelism have been facilitated by a lack of transparent employment mapping. Intentional mismanagement of records and concealment of who is employed and in what function have occurred frequently.
- Lack of operational capacity metrics and caseload standards for AGO prosecutors: Cases are not categorised according to their complexity or the seriousness of the offence, and no linkage is made between numbers of cases (per category of complexity) and numbers of prosecutors required to handle these cases.
- Lack of functioning operational structures, supervision and performance management systems, including continued professional development and lifelong learning: Prosecutors largely work independently, without standard operating procedures, and are not subjected to any performance management review. Consequently, there is a lack of consistency in decision-making and the quality of justice delivered. Furthermore, this has created an environment that allows prosecutors to avoid reporting to assigned duty stations, especially in case of remote or insecure posts.
- Lack of budgetary and planning oversight: The AGO is currently incapable of accessing the majority of the institutional budget assigned to it by the Ministry of Finance.20
- Lack of accountability and transparency vis-à-vis rights holders: judicial institutions, in particular the AGO and courts, are not accountable to the Afghan public, as decision-making processes and outcomes lack transparency and publicity.

2 RISKS AND ASSUMPTIONS

<table>
<thead>
<tr>
<th>Risks</th>
<th>Risk level (H/M/L)</th>
<th>Mitigating measures</th>
</tr>
</thead>
<tbody>
<tr>
<td>Increased political instability and/or government crisis, e.g.</td>
<td>M</td>
<td>The risk is mitigated by the nature of the intervention as funding is disbursed only upon achievement of the agreed benchmarks.</td>
</tr>
<tr>
<td>following the forthcoming Parliamentary elections (most likely to be</td>
<td></td>
<td></td>
</tr>
<tr>
<td>be scheduled for early 2018)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lack of will to implement reform measures by longstanding senior AGO</td>
<td>H</td>
<td>Close and high-level political engagement with key stakeholders within the AGO, in particular the Attorney General and relevant Deputy AGs, supported by the President, and with involvement of civil society.</td>
</tr>
<tr>
<td>staff</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Establishment of unattainable or unambitious benchmarks and/or</td>
<td>M</td>
<td>Establishment of benchmarks and timelines between EU and AGO based on a consensus-driven consultation process led by the AGO and including relevant Afghan CSOs.</td>
</tr>
<tr>
<td>timelines for incentivisation</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

20 In 2015, the AGO budget execution rate was 9% of its budget as foreseen in the National Budget - the lowest rate amongst all Afghan government institutions.
Delay in the achievement of benchmarks and negative impact on incentive disbursement | H | Design of benchmarks to allow for partial or belated fulfilment (triggering partial disbursement of incentive funding), as well as mix of medium-term reform benchmarks and legal/regulatory changes that can be implemented comparatively quickly.

Change in AGO leadership, such as replacement of the current AG with a less reform-oriented AG, or prolonged vacancy of the post | M | The proposal of AGO reform and its incentivisation are politically driven by the President, who is championing anti-corruption reforms as a flagship priority of his presidency. Although the substitution of the current AG with a less reform-oriented successor could have an impact on the proposed Action, it is likely that any newly appointed AG would be an equally reform-minded individual under the current Presidency. Political pressure from the international community should help to avoid any prolonged vacancies of the post if the scenario arises, with the proposed Action and associated incentive funding contributing a further strong argument for a swift appointment of a new AG.

Resistance of the international donor community to coordination and collaboration in its funding of AGO reform activities | L | All donors share the objective of national actors’ ownership of internationally funded projects. The approach of this Action is intended to produce a consensus-based reform agenda for one institution developed through consultations between the institution’s management and its immediate constituents, represented by civil society. Other donors welcome this approach as the previous lack of coordination was not caused by diverging interests, but rather lack of effective coordination structures and leadership.

Assumptions
- The proposed incentive funding, political support provided by the EU, other representatives of the international community and the Office of the President, as well as the support of the Afghan public as represented by civil society as a result of the consultation with relevant CSOs leading to the establishment of the reform agenda and benchmarks, will provide the necessary leverage for the reform-minded AGO leadership to implement the agreed reform measures.
- The EU’s diplomatic and technical resources are sufficient to support the AG in undertaking a strategic and inclusive consultation process on reform measures, as well as encourage endorsement by more reluctant key stakeholders, if needed.
- Afghan civil society is capable and eager to be involved and actively play its role in the reform process, from its design and inception to the monitoring of its development, and will contribute to sustaining the governance and accountability of the system.
- A medium-term reform agenda will help to change the orientation of the AGO from its current culture of corruption to one of public service.

### 3 Lessons learnt, Complementarity and Cross-cutting Issues

#### 3.1 Lessons learnt

According to an overview of sector-relevant projects established by the Rule of Law Board of Donors in mid-2015, 47 projects amounting to a total of approx. USD 750,000,000 were being implemented in support to the Afghan justice sector at that time, with a substantial proportion of them being in the final stages of implementation or in the process of closing down. Lack of effective donor coordination and resulting overlaps of the technical and
financial assistance provided are common criticisms directed at international support to the sector, as they have hampered the potential impact of the provided funds. Furthermore, past support has been delivered almost exclusively through ad hoc projects without any associated conditionality, led by donors' perceived priorities rather than consultations with the Afghan justice institutions regarding their needs, and without consistent involvement of Afghan civil society as the principal rights holder in Afghanistan. International support to the justice sector in the past decade has therefore overall generated limited Afghan ownership and missed opportunities to exploit potential synergies.

The proposed Action pre-empts similar shortcomings through its innovative design, as it foresees the incentivisation of a set of time-bound reform benchmarks and indicators agreed between AGO and EU following a consultation process involving the AGO and Afghan civil society, as well as other government stakeholders as appropriate. Crucially, this consultation process and the subsequent establishment of a forum for regular exchange between the AGO and civil society to accompany the reform process have been proposed and endorsed by the AG himself. The Action also foresees a grant scheme in support to Afghan CSOs, providing support to the provision of legal aid across Afghanistan. This will not only improve access to justice for Afghan citizens, but also support CSOs in carrying out their "watchdog function" regarding the delivery of public services by the government - in this case specifically the AGO - and observe changes and expected improvements in the AGO's service provision to the Afghan public as the implementation of the agreed reform measures proceeds.

3.2 Complementarity, synergy and donor coordination

The proposed Action complements a number of ongoing or recently closed EU activities within the broader Rule of Law sector:

- The Justice Service Delivery Project (JSDP) under the World Bank's ARTF. As mentioned above, this stand-alone project had to be considerable downsized due to lack of progress and opportunity to influence positive change, mainly due to a lack of political will and reform-orientated leadership of justice sector institutions throughout most of the project duration. Until its closure in November 2017, the JSDP will focus on a limited number of key areas, where positive impact can still be achieved, in particular access to justice and legal aid.

- The EU Police Mission in Afghanistan (EUPOL), which has been supporting not only the Afghan National Police (ANP) and Ministry of Interior until its end of mandate at the end of 2016, but also included a Rule of Law component in support to police-prosecutor coordination until the end of 2015. Related to this, since 2009 a number of other international implementing partners have supported both the MoI and the AGO to establish and strengthen their cooperation during the detection and investigation of crimes. The proposed Action will ensure to explore synergies with the Police Advisory Team currently being set up, once its terms of reference are finalised and staff are deployed, as the Team is expected to continue some of the core activities of EUPOL, albeit with a much more narrow focus and considerable reduced staff numbers.

21 Reduction from initially approx. USD 80M to approx. USD 20M.
22 German International Cooperation "GIZ", International Development Law Organization "IDLO", and Crisis Management Centre Finland "CMC"
- A number of complementary reform benchmarks have been incentivised by the EU under the SMAF incentive programme, specifically deliverables on anti-corruption, on work of the judiciary countering violence against women, and on the increase of the number of female civil servants.

- The Action also complements the Capacity Building for Results (CBR) project under the World Bank's ARTF, whose objective is the transparent and objective recruitment of junior-to high-level managerial positions within the Afghan civil service, the regulation of salaries for these posts based on a pre-established scale linked to education and work experience, and career progression based on merit.

So far, the international donor community has largely supported the Afghan justice sector through bilateral agreements. While the Rule of Law Board of Donors is supposed to act as a forum for donor coordination, the Board's extensive membership has rendered it largely ineffective in this regard. To address this issue, a Key Donors' Working Group on Rule of Law has been created in 2015 and meets on an ad hoc basis under EU chairmanship. Following the recent MEC draft VCA, this EU-led Working Group was convened twice to facilitate joint discussions regarding coordinated donor support to the AGO and combined political pressure to initialise and further necessary reforms. Meetings included representatives of the US - INL and USAID - UK, GIZ, the Netherlands, Japan, the World Bank, and a number of implementers of support measures within the AGO. Going forward, the Working Group will meet regularly to discuss AGO reform progress and the alignment of benchmarks incentivised by the EU with programmes implemented by other donors.

Particular attention will be paid to close coordination with the US, as USAID supports other key justice sector institutions, notably the Supreme Court, through its ADALAT project since 2016, and INL is the largest donor to the Afghan Rule of Law sector, as well as specifically to the AGO through its Justice Sector Support Programme (JSSP). Under the JSSP, INL funds a number of activities highly relevant to the proposed Action, such as the aforementioned assessment of the training needs of prosecutors implemented by the International Development Law Organization (IDLO). As of May 2017, around 600 prosecutors have already undergone an assessment of their skills, knowledge and perception of their own function, with the remainder to be assessed over the next few months. The final results of this exercise will be highly valuable in establishing baselines for a number of foreseen performance indicators under this Action, while in turn the proposed incentive funding can provide the necessary push to implement the reforms necessary to address shortcomings identified by the assessment. Regular bi-lateral meetings with INL are taking place in addition to their participation in the Key Donors' Working Group on Rule of Law, to exchange information on EU and INL support to the AGO.

3.3 Cross-cutting issues

Improved governance and stronger rule of law, achieved through more efficient and effective prosecution services and improved access to justice for the people of Afghanistan, will support the implementation of government policies in all sectors (including, e.g., environmental protection and climate change adaptation and mitigation). The following cross-cutting issues, however, will be more directly affected by this action.
Gender: The implementation of the proposed reform measures within the AGO will increase access to justice for vulnerable groups, including women, and increase women’s active participation in judicial processes. The foreseen benchmarks for incentivisation include deliverables regarding the functioning of the EVAW Law Units and an increase in the number of cases of GBV dealt with by the AGO. Furthermore, a number of gender-focused benchmarks are proposed, in particular regarding the recruitment of capable female graduates into prosecutor positions and their retention and promotion. As serious discrimination against female AGO staff has occurred in the past, the creation of appropriate and effective complaints mechanisms for such cases within the AGO also forms part of the benchmarks.

The AG has publicly committed to ending violence against women and children. As part of the foreseen consultation process with civil society, the AGO is expected to reach out to women’s rights groups to establish a dialogue on the main barriers preventing women’s access to justice. Furthermore, the proposed grant scheme in support to civil society will focus on providing legal aid to women and children as victims of crime, as well as victims of corruption-related crimes. The activities under the first component will not only contribute to increasing access to justice for women, but also allow CSOs to assess potential changes and improvements in AGO service delivery to women and the Afghan public in general as the AGO reform process progresses. Any positive or negative findings of CSOs in this regard will be fed back to the AGO via the established forum for exchange between the AGO and civil society.

Migration: According to a survey conducted in 2015, 39.9% of Afghans would leave Afghanistan if given the opportunity. Those living in urban centres are more likely to migrate, particularly the population of Kabul (49.7%), Balkh (48.5%) and Herat (48.4%). Afghans living in urban centres are also less likely to be satisfied with government performance compared to rural Afghans. It is no coincidence that the lowest level of satisfaction with government performance in a decade coincides with a peak in migration. Strengthening governance and government service delivery, including in particular in the justice sector, can help address some of the root causes of migration. Furthermore, the Action will complement the Afghan government's Job Stimulus Programme by establishing work opportunities for well-qualified young graduates, who are amongst the groups most likely to migrate out of Afghanistan.

Corruption: The promotion of merit-based recruitment of a new generation of Afghan legal specialists, combined with measures to establish standard operating procedures, effective human resources management and improved oversight will help to curb the corruption currently endemic amongst prosecutors. Moreover, the strengthening and professionalisation of the AGO, the institution in the Afghan justice system responsible for the investigation and prosecution of corruption cases, will contribute to the fight against corruption beyond the institution itself. As mentioned above, the proposed grant scheme in support to civil society will furthermore focus on providing legal aid to victims of corruption-related crimes, in addition to women and children as victims of crime.

23 The Asia Foundation, A Survey of the Afghan People, Afghanistan in 2015, 17 November 2015
4 DESCRIPTION OF THE ACTION

4.1 Objectives/results

The overall objective of this Action is to improve access to justice for all and ensure judicial integrity and independence and the establishment of empowered, effective, accountable and transparent justice institutions, thus contributing to the progressive achievement of SDG #16 "promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels".

The specific objectives are:

- **SO1**: To support high impact, key reform measures within the AGO to establish a more effective, efficient, competent and accountable prosecutorial system.

- **SO2**: To support and strengthen civil society's capability to provide legal aid to victims of crimes and to carry out their "watchdog function" regarding government service delivery, transparency and accountability, specifically regarding service delivery by the AGO.

The expected outputs are:

- **O1**: The creation of a transparent recruitment system based on competence, qualifications and experience for both prosecutors and administrative staff within the AGO;
- **O2**: The establishment and enforcement of a code of conduct and ethics, operational protocols and caseload framework for prosecutors;
- **O3**: The establishment of a performance management system based on merit, covering prosecutors, administrative and support staff within the AGO;
- **O4**: The harmonisation of the prosecutors' pay scale to that of judges, and the harmonisation of the administrative staff's pay scale under the CBR umbrella;
- **O5**: The establishment of a forum for regular exchange between the AGO and civil society in its role as a "watchdog" of government service delivery and accountability;
- **O6**: Increased provision of legal aid to victims of crimes, in particular women, children and victims of corruption-related crimes.

4.2 Main activities

The Action foresees the incentivisation of reform measures within the AGO, focusing in particular on human resources management and organisational reform, thus aiming to improve the operational and functional performance of the AGO as an institution and of the individuals working within it. The AGO has defined key areas of reform in close coordination with the EU and Office of the President, and tentative benchmarks for incentivisation and measurable and time-bound indicators have been set for each area. The reform areas and related benchmarks and indicators will be further discussed during a consultation process between the AGO and CSOs active in the areas of justice and anti-corruption, involving other government stakeholders as appropriate. Following this consultation process, a Financing Agreement will be signed to formally establish the final selection of benchmarks and indicators for incentivisation, as agreed between AGO and EU.

In line with the Problem Analysis in section 1.1.3, the following key areas for reform have been identified to address the most pressing challenges within the AGO:
Fight against Corruption and HR Management System Reform (covering recruitment, promotions and retirement of AGO staff):

1) Workforce assessment;
2) Comprehensive HR management reform programme;
3) Recruitment and promotion policies, including gender sensitive working environment;
4) Integrity assessments, vetting and disciplinary mechanisms;
5) Retirement;

Pay and Grading Scheme:
6) Harmonisation of prosecutors' salaries to those of judges;
7) Harmonisation of AGO administrative staff salaries under the CBR umbrella;

Performance:
8) Improved service delivery to victims of crime;
9) Effective and efficient functioning of the EVAW Law Units;
10) Effective and efficient prosecution of corruption cases;
11) Functioning performance evaluation and management systems;

Caseload Management:
12) Management of thematic and geographical distribution of cases;
13) Backlog clearance;
14) Establishment of caseload metrics, operational and ethical standards;

Life Long Learning and Skills Management:
15) Capacity-building programmes;
16) Specific offence-related training.

Disbursement of the incentive funding will be triggered by a positive EU assessment of reform progress against relevant benchmarks, with the support of an independent third-party monitor contracted under this Action. The proposed amount of incentive funding, EUR 24M, will be disbursed over a period of three years. Assuming an equal distribution of EUR 8M annually, this represents more than 50% of the current operational budget of the AGO per year. The operational budget is expected to grow further over the course of this Action, as the effectiveness of the institution increases due to progress in reform implementation.

The involvement of Afghan civil society in the consultation process, as well as the subsequent establishment of a forum for regular exchange between the AGO and civil society to accompany the reform process, is crucial to ensure public accountability of the AGO regarding the implementation of reform measures, and in turn also public support of the reforms. To this end, the consultation process will also include the joint development of a public awareness-raising strategy to facilitate the public dissemination of the reform agenda in local languages fostering in this way a "community of intents" between reform-minded leadership and individuals within the AGO and the Afghan public in favour of such reforms.

The EU will facilitate the consultation process, and the subsequent establishment of a forum for regular exchange and dialogue regarding the reform process and the related policy developments, through a six-months Technical Assistance (TA) provided to the AGO. To this
end, a TA team, funded through the Support Measures and contracted via a framework contractor, is expected to take up duty at the beginning of July 2017. They will assist the AGO in the development of the institution's Five-years Reform Strategy (i.e. the AGO five-year work programme) as requested by AGO leadership. The TA will also facilitate the early stages of the consultation process with civil society as foreseen in preparation of the implementation of this Action, and thus bridge EU assistance to the AGO from the preparatory phase into the implementation phase of this Action. The provision of TA specialised in the Administration of Justice is foreseen to continue throughout the implementation phase of this action under a service contract funded under this Action, to assist AGO Reform Strategy implementation, support the institution in meeting the agreed benchmarks, and develop related policies, ensure capacity building for AGO staff, and assist the AGO in reforms-related policy dialogue with the EU.

The Action foresees a parallel grant scheme to support civil society in carrying out its "watchdog function" regarding government service delivery, in this case specifically service delivery by the AGO, through the provision of legal aid and an accompanying assessment of reform progress and improvements in service delivery in relation to baselines established at the beginning of the implementation period. (cf section 5.4.1.1. for details) Besides allowing insights regarding the impact of reform implementation on the experience of the end users of the criminal justice system - the Afghan public, and specifically victims of crime - this feedback received from CSOs will furthermore contribute to the effectiveness of the assessment of reform progress against the benchmarks for incentivisation by the independent third-party monitor, providing valuable inputs regarding improvements and remaining challenges for the monitor to assess more closely.

4.3 Intervention logic

The current Attorney General (AG) has been well received by the international community and Afghan public due to his professional background in promoting human rights. He is committed to reforming the AGO, and receives strong support from President Ghani, who has made justice sector reform and anti-corruption measures one of the flagship priorities of his Presidency. This reform-minded leadership of the AGO presents a window of opportunity to push for key reforms related to the core human resources and management functions of the AGO through the provision of incentive funding.

In order to ensure sustainability and Afghan ownership of the reform process, the EU will promote a working partnership between the AGO and Afghan civil society, designed to produce consensus on an effective reform agenda and subsequent regular exchange on reform progress and potential challenges. This partnership between the AGO and the people it should serve is a crucial part of the intervention logic as a prerequisite to sustainable reform that will be owned by Afghan institutions and civil society. Technical Assistance will be provided to the AGO to facilitate the consultation process between AGO and CSOs, as well as assess potential capacity needs arising in the context of reform implementation and ensure close cooperation and coordination between AGO and EU Delegation. Civil society will furthermore be empowered to exercise its "watchdog function" regarding the implementation of the agreed reforms.
The end result will consist in a reformed, more efficient and more effective Afghan criminal justice system, with the involvement of civil society in such a crucial process furthermore serving to enhance public confidence in the ability for democratic self-governance.

5 IMPLEMENTATION

5.1 Financing agreement

In order to implement this Action, it is foreseen to conclude a Financing Agreement with the partner country, referred to in Article 184(2)(b) of Regulation (EU, Euratom) No 966/2012.

5.2 Indicative implementation period

The indicative operational implementation period of this Action, during which the activities described in section 4.2 will be carried out and the corresponding contracts and agreements implemented, is 48 months from the date of the entry into force of the Financing Agreement.

Extensions of the implementation period may be agreed by the Commission’s authorising officer responsible by amending this decision and the relevant contracts and agreements; such amendments to this decision constitute technical amendments in the sense of point (i) of Article 2(3)(c) of Regulation (EU) No 236/2014.

5.3 Implementation modalities

Both in indirect and direct management, the Commission will ensure that the EU appropriate rules and procedures for providing financing to third parties are respected, including review procedures, where appropriate, and compliance of the action with EU restrictive measures affecting the respective countries of operation24.

5.3.1 Grants: call for proposals "CSOs for Accountable Justice Institutions"

(a) Objectives of the grants, fields of intervention, priorities of the year and expected results

The overall objective of the grant scheme is to improve access to justice for all in Afghanistan.

The specific objectives are:

- SO1: to improve access to justice in Afghanistan through the provision of legal aid, assistance and information to raise citizens' awareness on their rights, and to afford them the means to have such rights enforced, including in remote and rural locations, focussing in particular on women and children as victims of crime, and victims of corruption-related crimes;

- **SO2:** to empower CSOs to carry out their "watchdog function" regarding government service delivery, transparency and accountability in line with the EU Roadmap for Engagement with Civil Society in Afghanistan\(^{25}\) and previous EU Calls for Proposals for civil society support in Afghanistan, in particular regarding the implementation of the agreed reform measures by the AGO;

These objectives will be realised by supporting CSOs in carrying out two main activities:

- The provision of legal aid and advice, including awareness raising actions, in particular to women and children victims of crime, and to victims of corruption-related crimes, to be implemented in as wide as possible a range of locations across Afghanistan, potentially through sub-granting schemes to reach local grassroots organisations.

- A baseline assessment of AGO service delivery towards its constituencies, and subsequent ongoing assessment of the progress of reform implementation within the AGO, and its impact on AGO service delivery. CSOs will be required to regularly report on their findings in this regard both to the EU and to the Afghan public.

The activities supported under the grant scheme will improve access to justice for Afghan citizens, in particular women, children and victims of corruption-related crimes. Furthermore, they will strengthen CSOs "watchdog function" regarding the implementation of the agreed reform measures within the AGO and its impact on service delivery to the Afghan public, while also fostering public support to the reform-minded AGO leadership regarding reform implementation and increased public trust into the Afghan justice system. Data received from CSOs on perceived challenges or delays regarding reform implementation will feed into the assessment of reform progress against the agreed benchmarks by the independent third-party monitor contracted under this Action, by pointing the monitor towards potential areas of concern.

**\(b\) Eligibility conditions**

In order to be eligible for a grant, applicants must:

- be legal persons, **and**
- be non-profit-making, **and**
- be civil society organisations, including non-governmental non-profit organisations and independent political foundations, community-based organisations, and private sector non-profit agencies, institutions and organisations, and networks thereof at local, national, regional, and international level, **and**
- be established\(^{26}\) in Afghanistan or in a Member State of the European Union, an


\(^{26}\) This being determined on the basis of the organisation's statutes that should demonstrate it has been established by an instrument governed by the national law of the country concerned. In this respect, any legal entity whose statutes have been
accession, potential or official candidate country as recognised by the EU, or in a Member State of the European Economic Area, and
- be directly responsible for the preparation and management of the action with their partners, not acting as an intermediary, and
- be operational (i.e. already managing a project and/or have an office) in Afghanistan at the moment of the launch of the Call for Proposals.

Potential applicants may not participate in Calls for Proposals or be awarded grants if they are in any of the situations which are listed in Section 2.3.3 of the Practical Guide to Contract Procedures for EU External Actions (PRAG)27.

Subject to information to be published in the Call for Proposals, the indicative amount of the EU contribution per grant is between EUR 1,500,000 and EUR 2,000,000. Grants may be awarded to sole beneficiaries and to consortia of beneficiaries (coordinator and co-beneficiaries). The indicative duration of the grants, i.e. the implementation period, is up to 36 months.

(c) Essential selection and award criteria

The essential selection criteria are financial and operational capacity of the applicant.

The essential award criteria are relevance of the proposed action to the objectives of the call; design, effectiveness, feasibility, sustainability and cost-effectiveness of the action.

(d) Maximum rate of co-financing

The maximum possible rate of co-financing for grants under this call is:

- for proposals submitted by applicants from Afghanistan, the grant may not exceed 90% of the total eligible costs of the action. The balance must be financed from the applicant's or partners' own resources, or from sources other than the European Community budget or the European Development Fund.
- for proposals submitted by applicants from any of the other eligible countries of establishment (see above), the grant may not exceed 75% of the total eligible costs of the action. The balance must be financed from the applicant's or partners' own resources, or from sources other than the European Community budget or the European Development Fund.

In accordance with Articles 192 of Regulation (EU, Euratom) No 966/2012, if full funding is essential for the action to be carried out, the maximum possible rate of co-financing may be increased up to 100%. The essentiality of full funding will be justified by the Commission’s

---

established in another country cannot be considered an eligible local organisation, even if the statutes are registered locally or a “Memorandum of Understanding” has been concluded.

authorising officer responsible in the award decision, in respect of the principles of equal
treatment and sound financial management.

(e) Indicative timing to launch the call
Second trimester 2018

5.3.2 Procurement (direct management)

<table>
<thead>
<tr>
<th>Subject in generic terms, if possible</th>
<th>Type (works, supplies, services)</th>
<th>Indicative number of contracts</th>
<th>Indicative trimester of launch of the procedure</th>
</tr>
</thead>
<tbody>
<tr>
<td>TA to the Attorney General Office</td>
<td>Services</td>
<td>1</td>
<td>II - 2018</td>
</tr>
<tr>
<td>Assessment of AGO reform progress against the agreed benchmarks for incentivisation</td>
<td>Services</td>
<td>1</td>
<td>I – 2019</td>
</tr>
</tbody>
</table>

5.3.3 Indirect management with an international organisation

A part of this Action may be implemented in indirect management with the World Bank in accordance with Article 58(1)(c) of Regulation (EU, Euratom) No 966/2012. This implementation entails increasing the government’s capacity for public service delivery in the justice sector through the use of the ARTF Ad hoc Payments facility for the disbursement of incentive funding, conditional to a positive assessment of reform progress against the agreed benchmarks by an independent third-party monitor contracted under this Action. This implementation is justified because the World Bank is the ARTF Administrator, the largest Trust Fund in Afghanistan operating directly on the national budget, and has long-standing experience in implementing development assistance in Afghanistan.

The entrusted entity will carry out one or more of the following budget-implementation tasks: launch calls for tenders and for proposals; define eligibility, selection and award criteria; evaluate tenders and proposals; award grants, contracts and financial instruments; act as contracting authority concluding and managing contracts, carry out payments, recover moneys due and cancel debts that cannot be recovered.

For the budget implementation tasks not yet assessed, the entrusted international organisation is currently undergoing the ex-ante assessment in accordance with Article 61(1) of Regulation (EU, Euratom) No 966/2012. The Commission’s authorising officer responsible deems that, based on the compliance with the ex-ante assessment based on Regulation (EU, Euratom) No 1605/2002 and long-lasting problem-free cooperation, the international organisation can be entrusted with budget-implementation tasks under indirect management.
5.4 Scope of geographical eligibility for procurement and grants

The geographical eligibility in terms of place of establishment for participating in procurement and grant award procedures and in terms of origin of supplies purchased as established in the basic act and set out in the relevant contractual documents shall apply.

The Commission’s authorising officer responsible may extend the geographical eligibility in accordance with Article 9(2)(b) of Regulation (EU) No 236/2014 on the basis of urgency or of unavailability of products and services in the markets of the countries concerned, or in other duly substantiated cases where the eligibility rules would make the realisation of this Action impossible or exceedingly difficult.

5.5 Indicative budget

<table>
<thead>
<tr>
<th>Description</th>
<th>EU contribution (amount in EUR)</th>
<th>Indicative third party contribution, in currency identified</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.3.1 – Call for proposals <strong>CSOs for Accountable Justice Institutions</strong> (direct management)</td>
<td>4,500,000</td>
<td>EUR 500,000</td>
</tr>
<tr>
<td>5.3.2 – Procurement (direct management)</td>
<td>1,700,000</td>
<td>N/A</td>
</tr>
<tr>
<td>5.3.3 – Indirect management with the WB</td>
<td>24,000,000</td>
<td>N/A</td>
</tr>
<tr>
<td>5.8 – Evaluation, 5.9 - Audit</td>
<td>200,000</td>
<td>N/A</td>
</tr>
<tr>
<td>5.10 – Communication and visibility</td>
<td>300,000</td>
<td>N/A</td>
</tr>
<tr>
<td>Contingencies</td>
<td>300,000</td>
<td>N/A</td>
</tr>
<tr>
<td>Totals</td>
<td>31,000,000</td>
<td>EUR 500,000</td>
</tr>
</tbody>
</table>

5.6 Organisational set-up and responsibilities

The EU and the government of Afghanistan will formally agree on a set of time-bound benchmarks and indicators for reform of the AGO through the signature of a Financing Agreement. A Steering Committee will be set up to ensure overall coherence of activities and allow for joint review of the assessment of progress against the reform benchmarks provided by the independent third-party monitor contracted under this Action. The Steering Committee will indicatively comprise representatives of the EU, the AGO, the Office of the President, the Ministry of Justice, the Ministry of Finance, the World Bank, and key donors engaged within the justice sector. Incentive payments will be released based on an Administration Agreement signed with the World Bank, to be channelled through the ARTF Ad-hoc Payment Facility. Benchmarks and indicators will be refreshed and adapted as the reform process progresses, according to the achievement of previous benchmarks.

With regard to the grant scheme in support to civil society, a Management Committee consisting of representatives of the EU as well as experts providing TA to the AGO as assessors will be set up in case of sub-granting being foreseen under a successful proposal.
This Management Committee will be in charge of overseeing the award of the sub-grants by the main beneficiary as well as monitor their implementation.

5.6.1. Assessment and final decision to incentivise

- i. The EU will develop and agree with the Government of Afghanistan a set of benchmarks, per period of implementation, to be incentivised.
- ii. The final formulation of these benchmarks and related indicators will follow a consultation process between the AGO and relevant CSOs.
- iii. Following the joint review of the assessment of progress against the reform benchmarks by the Steering Committee, as outlined above, the EU will establish an internal evaluation panel to decide about the disbursement of incentive funds.
- iv. Benchmarks assessed as not achieved by the agreed deadlines may be considered for incentive funding if and when these are assessed as achieved within the subsequent six-months period.
- v. Partially achieved benchmarks may be considered for partial funding of the amount allocated to the respective benchmark.
- vi. For the purpose of this Action, partial achievement is defined through demonstration of substantial progress and sound justification of non-achievement by the government, if:
  - a) in case of a quantitative target, more than 60% has been achieved;
  - b) in case of a process-related benchmark, efforts towards accomplishment of the target are demonstrated (e.g. specific processes are advanced);

Incentive funds will be released following a positive assessment of achievement or partial achievement of benchmarks as referred to above.

5.7 Performance monitoring and reporting

The day-to-day technical and financial monitoring of the implementation of this Action will be a continuous process and part of the implementing partners’ responsibilities. To this aim, the implementing partners shall establish a permanent internal, technical and financial monitoring system for the Action and elaborate regular progress reports (not less than annual) and final reports. Every report shall provide an accurate account of implementation of the Action, difficulties encountered, changes introduced, as well as the degree of achievement of its results (outputs and direct outcomes) as measured by corresponding indicators, using as reference the logframe matrix (for project modality) or the list of result indicators (for budget support). The report shall be laid out in such a way as to allow monitoring of the means envisaged and employed and of the budget details for the Action. The final report, narrative and financial, will cover the entire period of the Action implementation.

The Commission may undertake additional project monitoring visits both through its own staff and through independent consultants recruited directly by the Commission for independent monitoring reviews (or recruited by the responsible agent contracted by the Commission for implementing such reviews).
5.8 Evaluation

Having regard to the importance and nature of the Action, mid-term and final evaluations will be carried out via independent consultants contracted by the Commission.

A mid-term evaluation will be carried out for problem-solving and learning purposes, in order to address any shortcomings that may have emerged in particular in the implementation of the CSO projects stemming from the Call for Proposals.

A final evaluation of the Action will be carried out for accountability and learning purposes at various levels (including for policy revision), taking into account in particular the fact that the overall Action design is innovative in its provision of incentive funding for government reforms.

The Commission shall inform the implementing partners at least one month in advance of the dates foreseen for the evaluation missions. The implementing partners shall collaborate efficiently and effectively with the evaluation experts, and inter alia provide them with all necessary information and documentation, as well as access to the project premises and activities.

The evaluation reports shall be shared with the partner country and other key stakeholders. The implementing partner and the Commission shall analyse the conclusions and recommendations of the evaluations and, where appropriate, in agreement with the partner country, jointly decide on the follow-up actions to be taken and any adjustments necessary, including, if indicated, the reorientation of the project.

Indicatively, two contracts for evaluation services shall be concluded in the first quarter after, respectively, the submission of the interim and of the final reports by the CSOs Grant Scheme beneficiaries.

5.9 Audit

Without prejudice to the obligations applicable to contracts concluded for the implementation of this Action, the Commission may, on the basis of a risk assessment, contract independent audits or expenditure verification assignments for one or several contracts or agreements.

Indicatively, one contract for audit services shall be concluded in the first quarter after the end of the implementation period of the Action.

5.10 Communication and visibility

Communication and visibility of the EU is a legal obligation for all external actions funded by the EU.

This Action shall contain communication and visibility measures which shall be based on a specific Communication and Visibility Plan of the Action, to be elaborated at the start of implementation and supported with the budget indicated in section 5.5 above.
In terms of legal obligations on communication and visibility, the measures shall be implemented by the Commission, the partner country, contractors, grant beneficiaries and/or entrusted entities. Appropriate contractual obligations shall be included in, respectively, the financing agreement, procurement and grant contracts, and delegation agreements.

The Communication and Visibility Manual for European Union External Action shall be used to establish the Communication and Visibility Plan of the Action and the appropriate contractual obligations.

Communication and Visibility activities will be implemented through procurement. The procedure will be launched approximately in the first year after the signature of the financing agreement.
The activities, the expected outputs and all the indicators, targets and baselines included in the logframe matrix are indicative and may be updated during the implementation of the action, no amendment being required to the financing decision. When it is not possible to determine the outputs of an action at formulation stage, intermediary outcomes should be presented and the outputs defined during inception of the overall programme and its components. The indicative logframe matrix will evolve during the lifetime of the action: new lines will be added for including the activities as well as new columns for intermediary targets (milestones) for the output and outcome indicators whenever it is relevant for monitoring and reporting purposes. Note also that indicators should be disaggregated by sex whenever relevant.

<table>
<thead>
<tr>
<th>Results chain</th>
<th>Indicators</th>
<th>Baselines (incl. reference year)</th>
<th>Targets (incl. reference year)</th>
<th>Sources and means of verification</th>
<th>Assumptions</th>
</tr>
</thead>
<tbody>
<tr>
<td>To improve access to justice for all and ensure judicial integrity and independence</td>
<td>1. Percentage of Afghans who prefer Taliban justice over the formal justice system (disaggregated by sex)</td>
<td>1. 2016, 40%</td>
<td>1. 2020: 20%</td>
<td>1. National Corruption Surveys and Reports on the justice system</td>
<td>1. National Corruption Surveys and Reports on the justice system</td>
</tr>
<tr>
<td></td>
<td>2. Percentage of Afghans reporting the necessity of paying a bribe when entering into contact with justice institutions (disaggregated by sex)</td>
<td>2. 2016: 50%</td>
<td>2. 2020: 20%</td>
<td>2. National Corruption Surveys and Reports on the justice system</td>
<td>2. National Corruption Surveys and Reports on the justice system</td>
</tr>
<tr>
<td>Specific objective(s): specific objective : outcomes</td>
<td>SO1</td>
<td></td>
<td>SO1</td>
<td></td>
<td>SO1</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>To support key reform measures within the AGO to establish a more effective, efficient, competent and accountable prosecutorial system</td>
<td>SO1</td>
<td>1.1 Percentage of staff whose performance is assessed regularly under the newly established system (disaggregated by sex)</td>
<td>SO1</td>
<td>1.1 0% (2017)</td>
<td>1.1 100% (2021)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1.2 Percentage of staff whose salaries have been harmonised with the appropriate scale (disaggregated by sex)</td>
<td></td>
<td>1.2 0% (2017)</td>
<td>1.2 100% (2021)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1.3 Percentage of new recruits entering as a result of qualifications and tests (disaggregated by sex)</td>
<td></td>
<td>1.3 N/A (2017)</td>
<td>1.3 100% (2019)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1.4 Increased access to justice for Afghan citizens</td>
<td></td>
<td>1.4 &gt; 50% of victims report the crime they suffered</td>
<td>1.4 at least 70% (2019)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1.5 Effective prosecution of crimes, in particular crimes against women and children*, and crimes involving corruption* - percentage of referred cases investigated and sentenced</td>
<td></td>
<td>1.5 Number of VAW cases recorded with AGO, police and CSO in 2013: 4505 (2013)</td>
<td>1.5 Number of VAW cases recorded per year; number of cases involving a judge or prosecutors per year; good quality caseload statistics produced and disseminated regularly (2021)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1.6 Number of individuals directly</td>
<td></td>
<td>1.6 N/A (2017)</td>
<td>1.6 tbd</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The proposed incentive funding, political support provided by the EU, other representatives of the international community and the Office of the President, as well as the support of the Afghan public as represented by civil society as a result of the consultation with relevant CSOs leading to the establishment of the reform agenda and benchmarks, will provide the necessary leverage for the reform-minded AGO leadership to
<table>
<thead>
<tr>
<th>Outputs</th>
<th>SO2</th>
<th>SO2</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>To support and strengthen civil society's capability to provide legal aid to victims of crime and to carry out their &quot;watchdog function&quot; regarding government service delivery, transparency and accountability, specifically regarding service delivery by the AGO</td>
<td>benefiting from Justice, Rule of Law and Security Sector reform programmes funded by the EU** (disaggregated by sex)</td>
</tr>
<tr>
<td></td>
<td>2.1 Extent to which CSOs are involved in shaping reform measures and providing support to AGO reform strategy</td>
<td>2.1 CSOs: until 2017 not involved in AGO reforms strategy</td>
</tr>
<tr>
<td></td>
<td>2.2 Number of people directly benefitting from legal aid programmes supported by the EU**</td>
<td>2.2 N/A (2017)</td>
</tr>
<tr>
<td></td>
<td>2.3 Extent to which the AGO is accountable to civil society, particularly in remote districts.</td>
<td>2.3 No mechanism in place for consultations between the AGO and civil society (2017)</td>
</tr>
<tr>
<td></td>
<td>2.1 CSOs participate in a forum for regular exchange between the AGO and civil society, and make effective contributions to the reform process (2018-2019)</td>
<td>2.1 CSOs reports, TA reports, assessment of the independent third-party monitor</td>
</tr>
<tr>
<td></td>
<td>2.2 N/A (2017)</td>
<td>2.2 tbd</td>
</tr>
<tr>
<td></td>
<td>2.3 CSO involvement in AGO’s oversight institutionalised (2020)</td>
<td>2.3 CSOs reports under the grant scheme; assessment of the independent third-party monitor</td>
</tr>
<tr>
<td></td>
<td>2.3 CSO involvement in AGO’s oversight institutionalised (2020)</td>
<td>2.3 CSOs reports under the grant scheme; assessment of the independent third-party monitor</td>
</tr>
<tr>
<td></td>
<td>CSOs reports, TA reports, assessment of the independent third-party monitor</td>
<td>2.3 CSOs reports under the grant scheme; assessment of the independent third-party monitor; AGO reports</td>
</tr>
<tr>
<td></td>
<td>CSO reports, TA reports, assessment of the independent third-party monitor</td>
<td>The primary source of verification will be the assessment of the independent third-party monitor. Additional sources of information will be the reports from</td>
</tr>
<tr>
<td></td>
<td>CSOs reports under the grant scheme; assessment of the independent third-party monitor</td>
<td>A medium-term reform agenda will help to change the orientation of the AGO from its current</td>
</tr>
</tbody>
</table>

Afghan public sector actors support the AG in undertaking a strategic and inclusive reform planning process. CSOs are capable to carry out their "watchdog function", and are integrated into the reform process.
<table>
<thead>
<tr>
<th><strong>O1</strong> <em>(SO1)</em> - Creation of a transparent recruitment system based on competence, qualifications and skills for both prosecutors and administrative staff within the AGO</th>
<th>1.1.1 Status of transparent recruitment system based on competence, qualifications and skills for both prosecutors and administrative staff within the AGO</th>
<th>1.1.1 System not in place. First recruitment based on qualifications and selection tests (2016)</th>
<th>1.1.1 Regulations and procedures in place and applied (2018); workforce assessment carried out (2017)</th>
<th>1.1.1 Report of degree of achievement of benchmarks 1, 3 and 12</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>O2</strong> <em>(SO1)</em> - Establishment and enforcement of code of conduct and ethics, operational protocols and caseload framework for prosecutors;</td>
<td>1.1.2 Status of code of conduct and ethics, operational protocols and caseload framework for prosecutors</td>
<td>1.1.2 Statistics, SOPs and code of conducts not in place or not regularly applied. Performance Management System not in place (2017)</td>
<td>1.1.2 Regularly produced caseload statistics available (2020); standard operational protocols (SOPs) adopted and enforced (2018-9); code of ethics adopted and enforced. (2020)</td>
<td>1.1.2 Report of degree of achievement of benchmarks 1, 2, 4, 5, 12 and 14</td>
</tr>
<tr>
<td><strong>O3</strong> <em>(SO1)</em> - Establishment of a performance management system (PMS) based on merit, covering prosecutors, administrative and support staff within the AGO</td>
<td>1.1.3 Status of a performance management system (PMS) based on merit, covering prosecutors, administrative and support staff within the AGO</td>
<td>1.1.3 PMS not in place (2017);</td>
<td>1.1.3 PMS based on merit adopted covering all relevant staff (2018);</td>
<td>1.1.3 Report of degree of achievement of benchmarks 2, 4, 5, 8, 9, 10, 11, 13, 15 and 16</td>
</tr>
<tr>
<td><strong>O4</strong> <em>(SO1)</em> - Harmonisation of the prosecutors' pay scale to that of judges, and the</td>
<td>1.1.4 Status of harmonisation of pay scales</td>
<td>1.1.4 Pay scales not harmonised and CBR not yet implemented</td>
<td>1.1.4 Pay scales harmonised and CBR implemented</td>
<td>1.1.4 Report of degree achievement of benchmarks 1, 4, 6 and</td>
</tr>
</tbody>
</table>

beneficiary CSOs under the grant scheme. In addition:

1.1.1 Report of degree of achievement of benchmarks 1, 3 and 12

1.1.2 Report of degree of achievement of benchmarks 1, 2, 4, 5, 12 and 14

1.1.3 Report of degree of achievement of benchmarks 2, 4, 5, 8, 9, 10, 11, 13, 15 and 16

1.1.4 Report of degree achievement of benchmarks 1, 4, 6 and

The EU’s diplomatic and technical resources are sufficient to support the AG in undertaking a strategic and inclusive consultation process on reform measures, as well as encourage endorsement by more reluctant key stakeholders, if needed.

Afghan civil society is capable and eager to be involved and actively play its role in the reform process, from its design and inception to the monitoring of its development.
| O5 (SO1 - SO2) - The establishment of a forum for regular exchange between the AGO and civil society in its role as a "watchdog" of government service delivery and accountability | 1.1.5 Status of forum for regular exchange between AGO and Civil Society | 1.1.5 Forum not in place (2017) | 1.1.5 Forum created and meets regularly (2017-8) | 1.1.5 AGO Reports; TA reports. |
| O6 (SO2) - Increased provision of legal-aid services to victims of crimes, in particular women, children and victims of corruption-related crimes | 1.2.1 Number (or percentage) of cases receiving legal aid provided by CSOs | 1.2.1 to be determined during inception phase | 1.2.1 Significant increase of cases investigated and prosecuted (*to be refined during the inception phase*) | 1.2.1 CSOs reports under the grant scheme; Reports by AGO EVAW Law Units and Anti-corruption Units | Further SOV will be reports, policies and regulations produced and endorsed by the AGO and other relevant institutions and will contribute to sustaining the governance and accountability of the system. |