

**REPUBLIC OF SERBIA**

**MULTI DONOR TRUST FUND FOR JUSTICE SECTOR SUPPORT (MDTF-JSS)  
TF071444**

**AIDE MEMOIRE**

**December 11 to 19, 2013**

**A. INTRODUCTION**

1. **A World Bank team visited Belgrade** from December 11 to 19, 2013. The mission was led by Mr. Klaus Decker (Senior Public Sector Specialist and Task Team Leader) and comprised Ms. Georgia Harley (Public Sector Specialist) and Mr. Srdjan Svirčev (Public Sector Specialist). Together, these three staff also comprise the Functional Review Core Team. The mission was supported by Ms. Hermina Vuković Tasić (Program Assistant).
2. **The objectives of the mission were to:**
  - a. Conduct the launch event for the Judicial Functional Review;
  - b. Supervise the data collection process and start of the other activities under the Judicial Functional Review Advance the work on the Justice Sector Survey;
  - c. Ensure effective implementation of the ongoing Review of the Criminal Chain Process;
  - d. Participate at the Partners Forum;
  - e. Supervise the implementation of the recipient executed activities under the MDTF-JSS; and
  - f. Address any current implementation issues.
3. **The team met with the Minister for Justice and Public Administration, officials from the Ministry of Justice and Public Administration (MOJPA), the judiciary, justice sector stakeholders, MDTF donors, non-governmental organizations (NGOs) and other development partners.** The team expresses its gratitude to all the stakeholders met, particularly to the Judiciary and donors for their hospitality throughout the mission. A list of people met is attached as **Annex 1**.

**B. KEY FINDINGS AND AGREED NEXT STEPS**

4. **Key next steps are highlighted in the table below.**

Next steps	Time Frame	Responsibility
Justice Performance Framework	Draft for circulation by January 15 <sup>th</sup> , 2014. Workshop to discuss draft framework by January 31 <sup>st</sup> , 2014	World Bank team

Desk Review for the Functional Review	Draft for circulation by January 31 <sup>st</sup> , 2014.	World Bank team
Multi-Stakeholder Justice Perception Survey	Data due by March 15 <sup>th</sup> , 2014.	World Bank team
Fiscal impact analysis of draft free legal aid law	Draft report due December 31 <sup>st</sup> , 2013.	World Bank team
Seek Ministry of the Interior cooperation for Review of the Criminal Chain Process Analysis	By December 31 <sup>st</sup> , 2013.	MOJPA
Update of the MDTF-JSS website	Website launch by January 31 <sup>st</sup> , 2014.	World Bank team

### C. JUDICIAL FUNCTIONAL REVIEW

5. **The Serbian Judicial Functional Review was officially launched.** A launch event was hosted at the High Judicial Council on 16 December 2013 and was chaired by President Milojević (President of the Supreme Court of Cassation and the High Judicial Council). Minister Selaković (Minister of Justice and Public Administration), Mr. Oskar Benedikt (EU Deputy Head of Delegation), Ms. Zagorka Dolovac (Republic Public Prosecutor, President of the State Prosecutorial Council) and Mr. Tony Verheijen (World Bank Country Manager) spoke at the launch, and the Functional Review Core Team (Mr. Decker, Ms. Harley and Mr. Svirčev) presented an outline of the Functional Review, and the Power Point of the presentation is attached. Representatives of the judiciary, donors, civil society and the media attended the launch, and the event was publicized in local news media the following day.
6. **The scope of the Functional Review has been defined** by the Serbian authorities, MDTF-JSS and the EU (represented by the EC in Brussels and the EC Delegation in Belgrade). The Concept Note for the Functional Review has undergone several rounds of feedback to ensure maximum stakeholder consultation and is now in a final draft form at **Annex 2**. The concept note has now been submitted to World Bank management for a decision meeting, which will be held on 15 January 2014.
7. **Arrangements to secure active stakeholder engagement are in place.** Agencies that fall within the scope of the Functional Review have each nominated focal points, and the Functional Review Core Team held meetings with several of them during this mission. An NGO stakeholder meeting was also held, in addition to a range of bilateral meetings with relevant stakeholders including from the donor community.
8. **The first activities under the Functional Review have commenced.** The full team of local and international consultants is now in place, all advertised and selected via competitive recruitment processes. The Functional Review Core Team met with local consultants during the mission to outline expectations and provide instructions on the key first steps. Data collection has commenced, and early data is being shared within the team. The desk review of existing analytic work has commenced: most of the listed documents have been sourced and the Bank team continues to collect further documents beyond the list. Several documents

have been summarized and a draft desk review document is on track to be circulated among stakeholders in mid-January 2014. The Multi-Stakeholder Perception Survey fieldwork is underway, and that activity is on track to deliver preliminary results by March 2014. The Functional Review Core Team worked with IPSOS and the Association of Judges of Serbia to strengthen the response rate among judges for the survey. Drafting is underway for the Justice Performance Framework, and the team is on track to deliver a first workshop with stakeholders in late January 2014. The stakeholder and institutional analysis has also commenced. The Justice Competitions are underway, entries have been received and the Functional Review Core Team continues to encourage entrants ahead of the closing date of February 2014. In addition to circulating the competition flyers through existing networks in the justice sector, the Functional Review Core Team has decided to also advertise the competition to strengthen the response rate among the general public. The Functional Review Core Team also worked closely with IPSOS to design the access to justice data generation activity. It was agreed that the methodology will comprise a review of existing access to justice data, a representative sample survey, focus group discussions and key informant interviews, culminating in an analysis that can be drawn on for assessing existing performance in the measurement area of access to justice. The draft analysis is on track to be shared with relevant stakeholders in April 2014.

#### **D. MDTF-JSS ACTIVITY UPDATE**

9. **The draft Free Legal Aid law is currently undergoing public debate, following long and detailed advisory support by the MDTF-JSS.** During this mission, the MDTF team focused on finalizing the draft Fiscal Impact Analysis of the draft law, including refining drafts from the expert consultants and seeking input on comparative legal aid delivery from the relevant consultancy firm. The draft Fiscal Impact Analysis will be delivered to the MOJPA for comment by the end of December 2013.
10. **Discussions continued regarding how the MDTF-JSS should best support the Reform and Accession Facilitation Unit (RAFU).** The EU Delegation provided further comments on the RAFU proposal and accompanying draft TORs for the 12 RAFU consultants, focusing on building in sustainability elements, including twinning and ensuring that the consultants have sufficient experience and expertise to conduct capacity building with their counterparts. The proposal and TORs have been submitted to donors for their concurrence. Upon concurrence, the Bank will consider issuing a no-objection and the MOJPA will proceed with advertising and recruitment for those positions, with donors acting as observers to the process. Meanwhile, the MDTF-JSS agreed with MOJPA to extend the contracts of four existing consultants for one month until January 31<sup>st</sup> and one contract for two months from 1 January to 28 February 2014 to ensure continuity of operations. MOJPA has submitted requests, and a no-objection was issued during the mission.
11. **The MDTF team continues to seek the cooperation of the Ministry of Interior regarding the Review of the Criminal Chain Process,** and in particular the collection of data from various police stations. The MDTF has also drawn on the support of national stakeholders, including the PPO, SPC and MOJPA to seek MOI cooperation. At the conclusion of the mission, cooperation had not been secured. The MDTF team will consider next steps,

including the possibility of re-designing the activity to continue supporting criminal case processing in a manner that relies less on police cooperation. The MDTF team will report progress to the next Management Committee meeting in late January 2014.

12. **The redesign of the MDTF-JSS website continues.** Design work has been approved and wireframes are now ready. The draft website will be developed by mid-January, and content on the existing website should be migrated by the end of January 2014. It is expected that the website will be ready for launch by the next Management Committee meeting in late January 2014.
13. **The MDTF-JSS will consider a stronger involvement of SEIO.** The EU is now the lead donor in the area of justice and would like SEIO to be invited as an observer to MDTF-JSS Management Committee meetings. SEIO is by definition invited as observer to all IPA Steering Committee meetings as the head of SEIO/ NIPAC coordinates all IPA funds. This issue will be discussed with the donors at the MDTF-JSS Management Committee meeting.
14. **The MDTF-JSS management team proposes to host a Management Committee meeting in late January 2014.** Invitations and an agenda will be circulated in mid-January 2014.

#### **E. PROGRESS TOWARDS PROJECT DEVELOPMENT OBJECTIVE (PDO)**

15. **Progress toward the Project Development Objectives is satisfactory.** The objective of the Trust Fund is to provide support for strengthening and advancing justice sector reform in the Republic of Serbia in order to facilitate its integration to the EU. The implementation of Bank-executed activities is intensifying, with progress across all sub-components (institutional capacity, resource management and aid coordination, legal and institutional environment, judicial facilities and infrastructure, and outreach, monitoring and evaluation), with particular focus on delivering the Serbian Judicial Functional Review. The implementation of recipient-executed activities has also accelerated in 2013, and remaining funds under the RFU component will be disbursed via a reformed RAFU. The commencement of the EU screening process will provide additional impetus to reform and likely accelerate progress under MDTF activities.

### List of Persons Met

Last Name	First Name	Title/Organization
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#### Government and Justice Officials

Mr. Selaković	Nikola	Minister, MOJPA
Mr. Backović	Čedomir	Assistant Minister, Ministry of Justice and Public Administration
Ms. Jelača	Slavica	Assistant Minister, Ministry of Justice and Public Administration
Mr. Milojević	Dragomir	President, High Court Council
Ms. Kršikapa	Majda	Administrative Office, High Court Council
Mr. Stamenković	Branko	International Affairs and Legal Assistance Department - Adjoined Deputy, Republic Public Prosecutor's Office
Ms. Boljević	Dragana	President, Judges Association of Serbia
Mr. Hadžiomerović	Omer	Vice President, Judges Association of Serbia
Mr. Ilić	Goran	President, Association of Public Prosecutors
Ms. Nikolić	Mirjana	General Secretary, Association of Misdemeanor Judges
Mr. Mirić	Ognjen	Deputy Director, Coordinator for EU funds, Serbian European Integration Office

#### International Community

Mr. Kern	Martin	Head of Operations, European Union Delegation
Ms. Vandeputte	Bianca	Program Manager, European Union Delegation
Ms. Noor	Mina	Embassy of the Kingdom of the Netherlands
Mr. Gjengsto	Halvor	International Management Group IMG, Norway
Ms. Schweiger	Romana	Head of the Rule of Law and Human Rights Department, OSCE
Ms. Mazzolani	Denise	Senior Coordinator, Rule of Law and Human Rights Department, OSCE
Mr. Vetter	Larry	Chief of party, JRGA – Judicial Reform and Government Accountability, (USAID funded project)
Ms. Lukić	Dragana	Deputy chief of party, JRGA – Judicial Reform and Government Accountability, (USAID funded project)
Mr. Falke	Mike	Team leader, Legal Reform Project, GIZ
Mr. Baltić	Miloš	Project Manager, Legal Reform Project, GIZ
Ms. Pavlović	Ljubica	Project Manager, Legal Reform Project, GIZ

#### Other (Agencies, NGOs, Community Representatives)

Mr. Ćirić	Jovan	Director, Institute of Comparative Law
Ms. Knežević Bojović	Ana	Policy Coordinator, NALED
Ms. Šipka	Olga	Consultant
Ms. Manić	Jovanka	Consultant

Ms. Matić	Marina	Consultant
Mr. Obrenović	Dragan	Consultant
Ms. Logar	Svetlana	Ipsos Strategic Marketing

**World Bank Team**

Mr. Verheijen	Tony	Country Manager
Mr. Decker	Klaus	Senior Public Sector Specialist (TTL)
Mr. Svirčev	Srdjan	Public Sector Specialist, Program Coordinator
Ms. Harley	Georgia	Public Sector Specialist
Mr. Proskuryakov	Alexey	FM Consultant
Ms. Vuković Tasić	Hermina	Program Assistant

*Serbia Judicial Functional Review*  
**Multi-Donor Trust Fund for Justice Sector Support (MDTF-JSS)**  
**Concept Note**

## 1. PURPOSE OF THIS CONCEPT NOTE

1. **The World Bank has been requested to undertake a Functional Review of the courts and its closely related institutions in Serbia under the umbrella of the Multi-Donor Trust Fund for Justice Sector Support (MDTF-JSS).** The purpose of this concept note is to outline the Functional Review's proposed scope, activities and financing envelope, to identify related resource requirements for delivery within the timeframe and to highlight the strategic opportunities and risks associated with the Bank undertaking this assignment.

## 2. BACKGROUND

2. **Serbia intends to further accelerate its justice sector reform process based on results achieved during the past years.** The parliament adopted a new National Judicial Reform Strategy (NJRS 2013-2018) in July 2013. The strategy takes stock of problems encountered in the implementation of the previous strategy adopted in 2006 and is built around the key principles of independence, impartiality and quality of justice, competence, accountability and efficiency of the judiciary. It aims to strengthen the High Judicial Council (HJC) and the State Prosecutorial Council (SPC) and make them accountable, as the bodies mandated by the Constitution to guarantee the independence of the judiciary. It also acknowledges the need for changes in the Serbian Constitution to address the lack of real judicial independence seen in many features of the current system. The strategy also aims to strengthen the framework for recruitment, evaluation, discipline and ethics within the judiciary. An increase in resources for the Judicial Academy is provided, to enable it to become the compulsory point of entry to the judicial profession.<sup>1</sup> The Commission for the Implementation of the National Judicial Reform Strategy has been established and is responsible for monitoring and measuring progress in the implementation of the strategy. Based on the Action Plan for the implementation of the strategy, adopted in August 2013, the immediate priorities are harmonization of the jurisprudence, reduction of the backlog of court cases, and equal distribution of the workload.

3. **Serbia has made a breakthrough in the EU accession process by signing the Brussels Agreement on April 19, 2013.** In June 2013, the European Council endorsed the Commission's recommendation to open accession negotiations with Serbia. The screening (or "analytical examination of the EU Acquis") started in September 2013. The first intergovernmental conference should be convened in January 2014. Based on the experiences from countries that recently joined the EU, such as Romania, Bulgaria and Croatia, Chapter 23 is the first to be opened and the last one to be closed. The European Commission's Enlargement Strategy and Main Challenges 2013-2014 notes that the rule of law is now at the heart of the enlargement process. Under the framework of Chapter 23, Serbia will need to improve and adjust its judiciary

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<sup>1</sup> Commission Staff Working Document, Serbia 2013 Progress Report.

and fundamental rights policies in line with EU standards. An independent judiciary with capacities to efficiently perform its tasks of maintaining and safeguarding the rule of law is a cornerstone of these policies. Under the new approach to enlargement endorsed by the Council in December 2011, countries will be expected to tackle issues such as judicial reform and the fight against organized crime and corruption early in the accession process. The Commission further noted that the accession process is now more rigorous and comprehensive than in the past, reflecting the evolution of EU policies as well as lessons learned from previous enlargements. Based on this new approach, accession negotiations are beginning with Chapter 23 (Judiciary and fundamental rights) and Chapter 24 (Justice, Freedom and Security). As outlined in the Commission's Progress Report and country conclusions in October 2013, rule of law issues are among the key challenges ahead for Serbia, and especially the judicial reform remains among those key areas.

4. **Whilst much analytic work has been undertaken in the justice sector in recent years, there is a lack of an objective measure of where the Serbian justice sector stands in relation to EU standards and what further reforms will be required to meet those standards.** A Functional Review is therefore required and will assist on two levels:

- a) To provide a technical and objective baseline of the current performance of the courts to enable Serbia to assess the impact of future justice reform initiatives;
- b) To inform the accession negotiations under Chapter 23, starting with the design of the Serbian authorities' draft action plan on the judiciary, which the Serbian authorities will be required to draft as the opening benchmark for the negotiations under Chapter 23.

5. **Following the European Commission's recommendation to conduct a Functional Review of the Judiciary, the Serbian authorities have requested the Bank, through the MDTF-JSS, to carry out the Functional Review.** The MDTF-JSS, which comprises contributions from key international development partners, is partly executed by the World Bank and partly by the Ministry of Justice and Public Administration (MOJPA) of the Republic of Serbia. The MDTF-JSS aims to facilitate the acceleration of Serbia's EU integration process in the justice sector by providing targeted support to Serbia's justice sector to advance justice sector reform and modernization, including in the areas of strengthening institutional capacity and the resource management functions in justice sector institutions. The Functional Review will be implemented under the Bank-executed part of the MDTF-JSS.

### **3. STRATEGIC RELEVANCE AND RATIONALE FOR BANK ENGAGEMENT**

6. **The Functional Review is consistent with the objectives of the MDTF-JSS.** It directly supports Serbia's EU integration and provides an objective technical basis for feeding Serbia's progress towards aligning its judiciary under the EU standards under Chapter 23 of the Acquis. The Bank was requested by both negotiating parties to conduct the Review and is well placed as 'honest broker' that is both independent from the negotiations and able to provide technical advice.

7. **The Functional Review builds on work previously undertaken by the MDTF-JSS,** including the Judicial Public Expenditure and Institutional Review (JPEIR 2010) which analyzed the financial and human resource management issues facing the judiciary at that time. The

Functional Review also aligns closely with work being currently undertaken by the MDTF-JSS, including the development of a Justice Performance Framework and the Multi-Stakeholder Perception Survey which builds on a baseline survey conducted in 2010.

8. **The Bank has substantial experience in supporting client countries in functional reviews in the ECA region.** This Functional Review will be based largely on similar reviews conducted by the Bank, with innovations to incorporate lessons learned and tailoring to suit the Serbian context. They include a deliberate data generation effort to capture user perceptions and access to justice aspects, a more systematic outreach to the broader public, including a photo and suggestion competition to generate ideas, and a designated full-time team member based in Belgrade for proactive communication with all stakeholders. The Functional Review Core Team has recent experience in conducting these exercises, including most recently in Romania, so it is well placed to apply lessons to enhance the Serbian Functional Review.

9. **The Functional Review aligns with the Bank's Country Partnership Strategy for Serbia,** which focuses on efforts to improve efficiency and outcomes in public spending. Further, it aligns with the Bank's increasing emphasis on supporting client countries to take an evidence-based approach to improving service delivery.

10. **There is strong stakeholder support for the conduct of a Functional Review,** including from the MOJPA, SPC, HJC and the professional associations (Association of Judges, Association of Prosecutors, Bar Associations etc.). During a mission in May 2013, stakeholders expressly supported the activity, noting that the Functional Review would add value to the reform process by providing objective baseline data and a technical gauge for measuring future reform efforts associated with EU accession.

11. **The Functional Review enjoys strong donor support,** particularly from the European Commission which initially proposed the Bank undertake this review. On 14 June 2013, the MDTF-JSS Management Committee agreed that a Functional Review should be undertaken, subject to the identification of funding for the activity. Funding has been sourced via a reallocation from within the MDTF-JSS budget with the agreement of the MOJPA. This reallocation has required an amendment to the Administration Agreement between the World Bank and the European Commission. Upon the confirmation of funding, on 3 October 2013 the Management Committee agreed that the Functional Review commence as a matter of priority.

#### **4. OBJECTIVES OF THE FUNCTIONAL REVIEW**

12. **The Functional Review will provide a baseline and analytical input for the accession negotiations between Serbia and the EU.** The Functional Review will support this process by:

- a) Assessing the current functioning of the institutions of the broader judicial system in Serbia with a view to providing analytical and advisory input to ongoing and planned justice reform initiatives in Serbia in view of EU accession, and
- b) Providing a sound and solid empirical basis to enable Serbia to assess the impact of future justice reform initiatives compared to current justice system performance.

13. **The Functional Review will thus provide analytical and advisory input** to enable the Serbian authorities to adjust their strategy framework to improve the performance of the judicial system. The Functional Review will be used as a base for updating of the Action Plan for the implementation of the NJRS 2013-2018. Also, the Functional review will provide input to the design of future accession action plans which will be developed as benchmarks under the accession negotiation process.

## 5. THE SCOPE AND FOCUS OF THE FUNCTIONAL REVIEW

14. **The Review will focus on the courts as the main vehicle for justice service delivery and the primary institutions of justice in Serbia.** The scope will include all types of services provided primarily by the courts and cover litigious and non-litigious aspects of civil, commercial, administrative and criminal justice. The focus will be on actual implementation and day to day functioning of the institutions, rather than just on the law on the books. The scope will also include those aspects of the functioning of the other institutions to the extent to which they enable or impede service delivery by the courts. These will include: the MOJPA, HJC, SPC, the courts, prosecutor's offices, the Judicial Academy, the Ombudsman's Office, the police, prisons and justice sector professional organizations (the Bar, notaries, bailiffs, mediation etc.). Thus, the analysis will not provide entire functional reviews of the institutions *per se* but rather focus on the extent to which each of these institutions supports the delivery of justice services by the courts. Where a question arises as to whether a certain issue within an institution falls within the scope of the Functional Review, the test to be applied will be *'whether and how the issue contributes, either directly or indirectly, to the delivery of justice services by the courts in Serbia'*.

15. **In doing so, the Functional Review will focus on three areas of performance in terms of justice service delivery: efficiency of service delivery; quality of services delivered, and; access to these services.** The precise measures and indicators of these criteria will be outlined in the justice performance framework, which will be the first substantive activity conducted under the Functional Review. Typical examples of performance indicators for efficiency would include disposition times and clearance rates, which measure outputs per resources and timeliness of delivery. Examples of performance indicators for quality of services would include reversal rates on appeal and court user perceptions of fairness, impartiality, consistency and integrity. Typical examples of performance indicators for access to justice would include costs of justice services, number of case filings (including inflow of minor cases), availability (and adequacy) of subsidized legal assistance (legal aid); and court user and non-user perceptions, which go to physical, geographic and financial access to justice. Aspects of accountability and competence will be dealt with under these three measurement areas, in line with the scope of the national judicial reform strategy. Where appropriate, the Council of Europe's Commission for the Evaluation of the Efficiency of Justice (CEPEJ) methodology will be used to enhance comparability of statistical data across European justice systems.

16. **The Functional Review will include an analysis of the current performance situation (baseline), challenges and possible options moving forward to improve performance to align with EU standards.** The analysis will cover the management of a range of resources, such as financial, human resource and technology resources, including the allocation, distribution and

execution of those resources to meet justice service delivery needs. It will also look at the management of these resources, including their geographic distribution via policy development, performance management tools, training and the use of alternative forms of dispute resolution (ADR) and newly introduced judicial services (such as notaries and bailiffs) to improve justice service delivery. The depth of all such analysis will, however, depend on the data available and the cooperation of relevant stakeholders.

17. **The Functional Review will highlight why challenges, gaps, needs or dysfunctions occur in the delivery of justice services.** It will also seek to identify success stories and bright spots in the justice system, analyzing why these too have occurred and how they may be emulated or replicated across the system. From this analysis, the Functional Review will outline a series of actionable and pragmatic recommendations to improve justice service delivery. A risk framework will also identify risks affecting the performance of the justice system, including possible risk mitigation options and criteria for future evaluation of performance and risks.

18. **Within the scope, a distinct characteristic of this Functional Review will be a strong emphasis on data,** particularly on collecting, generating, and organizing data to measure and manage justice system performance according to the justice performance framework. This data effort necessarily requires the complement of analytical work to clearly assess the scope of performance challenges. For the identification of such challenges, the Functional Review can build among others on previous publications and assessments such as the EU funded Evaluation of the Rule of Law Sector, the JPEIR 2010 etc. The review will apply an institutional and political economy lens, seeking to identify recommendations that are feasible to implement in the Serbian context and actionable by stakeholders.

19. **The Serbian authorities, the EC and the World Bank have agreed on the scope outlined above** and the institutions to be covered to ensure the relevance and effectiveness of the Functional Review.

## 6. TIMEFRAMES

20. **The Functional Review is expected be completed by around July 15<sup>th</sup>, 2014** so that the results can serve their purpose, namely to inform the action plan on the judiciary that Serbian authorities will be required to submit as an opening benchmark for the accession negotiations under Chapter 23. The timeframe is ambitious for a significant technical assistance activity. Preparatory work has commenced, and the Functional Review team has been identified and recruited. A launch event was held in Belgrade on 16 December 2013 and was widely attended. Data generation, which will be the most time-consuming part of the review process, has commenced with the Multi-Stakeholder Perception Survey. The desk review and some data collection have commenced and both will proceed through the winter. The greatest risk to this timeframe would be delays in the collection of data or a lack of cooperation of stakeholders in sharing data. With this in mind, two data collection consultants have been selected to work simultaneously, both of whom have previously worked with these stakeholders to collect similar data. The results should thus be available by July 15<sup>th</sup>, 2014.

## 7. COMPONENTS AND ACTIVITIES FOR THE FUNCTIONAL REVIEW

21. **The components and activities comprising the Functional Review are outlined below.** Some activities will run in parallel to some extent. For example, data collection and generation efforts have commenced and will not wait for the justice performance framework to be finalized.

### A. COMPONENT 1: PERFORMANCE FRAMEWORK

22. **The first component will focus on establishing a justice system performance framework** and then generating baseline data. The performance framework for the judicial system will form the basis of assessments to be made under the rest of the Functional Review. This includes designing the framework, mainly based on European practices but will be tailored to the specific needs of the Serbian context. Reference frameworks will include the CEPEJ and Venice Commission standards, the EU Justice Scoreboard and national EU Member States experiences, such as the Dutch and Finnish quality management frameworks and the International Framework for Court Excellence, and the US Trial Court Performance Standards and CourTools.

23. **The framework will identify key performance measurement areas, performance indicators and data types to feed the relevant indicators vis-à-vis EU standards where possible.** Data collected or generated from the Functional Review will then be organized and stored according to the framework. Following the Functional Review, the framework can inform future sector work by institutions and judicial professionals, such as judges, prosecutors and court managers, to measure performance in terms of justice service delivery and provide a mechanism for the collection, analysis and publishing of data to improve the analytic work of the MOJPA, HJC and SPC.

### B. COMPONENT 2: PERFORMANCE AND JUSTICE SERVICE DELIVERY: BASELINE AND CHALLENGES IN THE SERBIAN JUDICIAL SYSTEM

24. **Under Component 2, the Functional Review will conduct performance assessments across the justice system** with a view to identifying contributions and obstacles to the delivery of justice services in Serbia.

#### i. Desk Review

25. **A desk review will be undertaken of existing and relevant analytical work** that has recently been undertaken in relation to justice sector performance and related challenges, with a focus on the delivery of justice services. The desk review will identify as many works as possible, catalogue and store them and take stock of existing challenges, success stories and lessons learned from each. The desk review will be annexed to the Functional Review, and thus be available for stakeholders to use as a reference for their future work, be they Serbian authorities or incoming experts. A tentative list of existing relevant analytic works is at **Annex 1**.

## ii. Data Collection

26. **Relevant electronically and manually collected judicial statistics will be obtained** from the all relevant institutions that fall within the scope of the Functional Review, including the HJC and Supreme Court of Cassation. The Bank team will also identify quantitative data previously generated by justice sector analyses in Serbia. Data collected by the JPEIR 2010 will also be utilized. The Bank team will screen the case management system and other potential electronic sources of relevant case-processing and performance-related data. The financial and human resource management systems will be able to provide basic data relating to the allocation and utilization of financial and human resources. The Ministry of Finance and the Ministry of the Interior will also be approached to provide relevant data. The data collection process will identify where relevant data is missing and propose recommendations for the Serbian authorities to strengthen future data efforts to enhance service delivery, including possible enhancements to the case management system.

## iii. Data Generation

27. **Additional data will need to be generated** for those performance aspects and indicators not sufficiently covered by currently existing data. This aspect of the Functional Review is likely to be significant and one of the more time-consuming activities. Where gaps are already known, data generation will commence expeditiously at the beginning of the Functional Review, in order that it be available in time to be useful for the analysis. To some extent though, data collection and data generation will occur concurrently, namely where gaps are identified along the way, the Functional Review team will consider the feasibility of generating data to fill those gaps. A significant data generation activity will be the follow-up survey to the 2010 Multi-Stakeholder Justice Perception Survey, which is currently underway. Additional data generation efforts may comprise: mapping of specific judicial procedures, case-file analysis, and a justice needs assessment.

## iv. Stakeholder and Institutional Analysis

28. **A blended stakeholder, institutional and political economy analysis of the current justice system will be undertaken** to assess how the institutional arrangements and stakeholder behavior impact service delivery. This analysis will inform the assessment and recommendations to be outlined in the Functional Review to ensure that recommendations are feasible, pragmatic and fit well to the Serbian context. The analysis will identify key stakeholders and their incentives/interests and power/influence in the justice system and its reform, as well as the interaction of political and economic processes in the justice system, including the distribution of power and influence between stakeholders and the processes that create, sustain and transform their relationships. The analysis will go on to identify stakeholder and institutional barriers and risks to improving justice service delivery, as well as drivers for change, including opportunities to align stakeholder incentives to improve service delivery.

## v. Access to Justice Analysis

29. **The Functional Review will conduct an analysis of the justice system’s performance in terms of access to court services** in Serbia. Although access to justice is only one of three areas of performance measurement under the performance framework, reliable data on access to justice is often weak, in part because it seeks to measure what does not make it into the system. This thus requires deliberate data efforts, particularly in order to include marginalized groups (including the poor and Roma), whose experience of justice service delivery may not be well captured within existing data collection. As a result, a stand-alone activity for access to justice is required under the Functional Review and should improve the overall quality of the analysis.

30. **The access to justice analysis will focus in particular on the existing limitations or barriers to access to justice services, including the reasons and drivers for those barriers.** The analysis will comprise three aspects: 1) a review of existing analytic work and collection of existing data; 2) an assessment of unmet justice needs, including the generation of data on unmet needs via additional representative sample surveys and focus group discussions, culminating in; 3) an analysis of access to justice including identification of opportunities to strengthen access to justice. In doing so, the analysis will also address the current and projected demand for justice services, noting the inflow of cases, including minor cases to the courts under the current legal framework. The analysis will identify actionable and feasible opportunities to improve access to justice in order to strengthen justice service delivery in Serbia, both generally and in particularly for marginalized groups.

#### **vi. Cross-Country Data Collection**

31. **Justice performance data will be collected from EU Member States and countries with systems comparable to the Serbian judicial system.** Cross-country analysis will put the Serbian experience in the context of the performance of comparator countries, particularly EU Member States, in terms of justice service delivery. Focus will be as much as possible on hard data, based on the performance framework and the cross-country data collected. The analysis will seek to identify common or different causes for success or challenges. Where possible, this analysis will seek to identify solutions and best-fit practices from across Europe and internationally.

#### **vii. Performance Hypotheses**

32. **Based on the above, this aspect of the Functional Review will outline preliminary conclusions** about specific challenges facing justice service delivery and successes that may be replicated. Hypotheses will be tested and results from quantitative and qualitative data collection will be calibrated in an iterative process. Hypotheses will also be confirmed, refined, changed, or rejected in an iterative and consultative process that will be led by the Functional Review Core Team with input from relevant stakeholders throughout the analysis. Wherever possible, performance will be assessed against EU standards, including those of the Venice Commission / CEPEJ of the Council of Europe.

### **C. COMPONENT 3: ASSESSING RESOURCES AS THEY AFFECT PERFORMANCE AND SERVICE DELIVERY IN THE SERBIAN JUDICIAL SYSTEM**

33. **The Functional Review will conduct four analyses of how different types of resources are used and coordinated for service delivery**, along with a specific analysis looking at resource allocation to ensure service delivery across the territory and different levels of jurisdiction. The aim here is to analyze how resources ultimately contribute to, or be obstacles to, the challenges and hypotheses identified in Component 2.

#### **i. Financial Resource Analysis**

34. **The financial resource analysis will link financial resource management to justice service delivery.** This analysis will cover aspects such as (1) institutional arrangements for expenditure planning and budget execution including procurement, (2) revenues, resource allocation and expenditure outturns, and (3) the overall performance of the financial resource management system in terms of predictability, effectiveness and compliance. The analysis will include an assessment of the funding levels and their appropriateness compared to the overall public sector budget, sector policy and service demand. It will identify options to achieve efficiency gains by realigning financial resources and improving budget execution. The analysis will undertake an inter-regional comparison of resources flows and resources adequacy in Serbia, the linkages between resources and organizational performance and appropriateness of existing regulatory mechanisms. This will be done by comparing resource allocation (in terms of both financial resources and HR resources) with caseload distribution and caseload clearance rates across the country and different levels of jurisdiction in order to identify performance and resource discrepancies between urban and rural areas, lower courts and higher courts etc.

#### **ii. Human Resource Analysis**

35. **The human resource analysis will look at the linkages between human resources and performance in the Serbian justice system** in terms of service delivery, in particular focusing on how human resource management contributes to or impedes the delivery of justice services by the courts. Building on the JPEIR 2010, the human resource analysis will assess recruitment, initial training, on-the-job training, job descriptions and performance management, career paths and promotion, staff retention, gender balance, disciplinary actions and termination, geographic mobility (and any legal limitations on it) HR planning and their contributions to justice service delivery in Serbia. The analysis will assess the distribution of judicial and non-judicial staff among and within judicial system institutions and across the court network throughout the country in relation to the existing and anticipated workload. The review will analyze different options to ensure appropriate flexibility of staff allocation throughout the territory required to adjust to the development of the workload.

#### **iii. ICT Analysis**

36. **The ICT analysis will look at the linkages between ICT resources and performance in the Serbian justice system** in terms of service delivery, in particular focusing on how

distribution of ICT resources contributes to or impedes the delivery of justice services and provides performance data on which to base planning. Building on the recently finalized ICT Strategy for the Justice Sector 2013, the analysis will assess the planning and distribution of ICT equipment, software and ICT personnel among and within judicial system institutions and across the court network throughout the country in relation to the existing and anticipated workload. In addition, the analysis will look into specifics of the budget planning for investments in the ICT and existing modalities for execution. This analysis will also propose, if necessary, opportunities to strengthen the case management system in the areas of case administration, reporting, performance monitoring, and access to information. An IPA-funded efficiency project will also address ICT issues in 2014, so the Functional Review will limit its analysis to the aspects outlined above and be careful to avoid potential for overlap or duplication between related projects.

#### **iv. Infrastructure Analysis**

37. The infrastructure analysis will look at MOJPA's capacity to plan and execute infrastructure investment to meet justice needs, including the adequacy of asset and facility management arrangements and budget planning and execution. It will also assess the geographic allocation of court locations against population data, case numbers and types, as well as the results of the Multi-Stakeholder Perception Survey. The analysis will identify in general terms the extent to which infrastructure support or impedes justice service delivery.

### **D. COMPONENT 4: OPTIONS AND RECOMMENDATIONS**

38. **Based on the above analysis, the Functional Review will outline opportunities to improve justice service delivery by the courts in Serbia.** This component will outline short, mid and long term options to address the performance challenges identified in the analysis, focusing on identifying resource gaps and ways to improve resource allocation and utilization. The analysis will be carried out in cooperation with representatives of each institution to be assessed. This will require working with those in charge of management of funds and other resources in courts and prosecutors' offices, including at the local level. Actionable and feasible opportunities will be identified to improve both resource mobilization and resource utilization (including, for example, staffing redistribution and business process engineering) in order to improve justice service delivery in Serbia. The recommendations could provide the Serbian authorities with a roadmap of possible future initiatives and nourish the Serbian action plans for opening benchmarks for negotiations under Chapter 23 of the *Acquis*.

### **E. COMPONENT 5: RISK MANAGEMENT FRAMEWORK**

39. Once the analytical input is available, the Functional Review will identify risks affecting the performance of the system and develop risk mitigation options.

## 8. COMMUNICATION AS A CROSS-CUTTING ISSUE

### A. ENGAGEMENT WITH JUSTICE INSTITUTIONS

40. **The Functional Review team will create a Stakeholder Consultation Group**, which will comprise representatives of the institutions that fall within the scope of the Functional Review, namely the MOJPA, HJC, SPC, the courts, prosecutor's offices, the Judicial Academy, the Ombudsman's Office, the police, prisons and justice sector professional organizations (the Bar, notaries, bailiffs, mediation etc.). Each institution will appoint a contact person to address requests relating to the Functional Review, and this contact person will be responsible for channeling requests within the institution. The contact person should be sufficiently familiar with the technical aspects of the institution's operations and sufficiently high-level to have leverage to ensure feedback and cooperation within the organization. The contact person will need strong support from the institution's leadership for this assignment in case parts of the institution do not actively participate in the Functional Review.

41. **The Functional Review Core Team will be proactive in stakeholder engagement and communication.** A dedicated Bank team point person will be appointed in Belgrade to channel communication between the team and the authorities and *vice versa*. The Bank will engage with each institution on equal footing and in an open and transparent manner. Workshops and retreats will be held at pivotal stages throughout the process, facilitated by the Functional Review team. Data will be made available to view at any time by institutions on a shared website. Draft analyses will also be shared for comment and institutions will be provided an advance copy of the final report. This engagement will take place with both the technical and the leadership level in the various institutions covered. Final bound copies of the Functional Review Report will be furnished to stakeholder institutions in both Serbian and English, and institutions will be invited to participate in dissemination activities.

### B. ENGAGEMENT WITH BROADER STAKEHOLDERS

42. **It is the common understanding of the Bank, the Serbian authorities and the EC that the Functional Review will be made public.** This will commence with a media launch, which is intended to raise awareness in the broader community of the justice reform agenda and the efforts underway to align justice service delivery with EU standards via the accession negotiations. The final Functional Review Report will be published and available to the public on the MDTF-JSS website and via EC dissemination mechanisms, with an advance copy provided to stakeholder institutions.

43. **The Functional Review team will also host an NGO stakeholder group.** Between five to ten NGO groups with competence in the justice sector will be invited to participate. It is anticipated that the following NGOs will be invited to the NGO stakeholder group: the Serbian Bar Association, Judges' Association, Prosecutors' Association, Misdemeanor Judges' Association, the National Association for Local and Economic Development (NALED), the Lawyers' Committee on Human Rights (YUCOM), the Belgrade Center for Human Rights, the Institute of Comparative Law and representatives of Law Faculties in Serbia. Meetings would take place each quarter between December 2013 and July 2014 as the Functional Review

progresses. NGOs would also be invited to certain events, including the public media launch, the photo exhibition (described below). Relevant NGOs will be provided a copy of the final report and be invited to dissemination activities.

44. **The Functional Review will also conduct a Justice Competition** in order to generate fresh and original suggestions on how to improve accessibility, quality or efficiency of justice services. The aims of the Justice Competition are: to raise awareness of justice reform in Serbia and the Functional Review; to promote citizen engagement in justice reform; to generate ideas/suggestions on justice reform initiatives from broader stakeholder groups; and to inform the justice reform process with those broader stakeholder views. The focus of the competition is intended to be forward-looking, with an eye on EU accession rather than a critique of past or existing practices. The Justice Competition will comprise two smaller competitions. The first competition will be a Suggestion Competition: 'in 500 words or less, tell us your suggestion for improving the justice system in Serbia'. The second competition will be a Photo Competition. Applicants will submit photos about their visions for the future of justice in Serbia post-accession. In each case, the winner would be awarded a \$1,000 prize. Photographs will also be displayed at an exhibition, to which justice stakeholders will be invited. The Competition has commenced in November 2013 and will close in February 2014.

## 9. FUNCTIONAL REVIEW RISKS AND MITIGATION OPTIONS

45. **The Functional Review is subject to a number of risks related to program delivery and impact, which will require mitigation.** The key risks and proposed mitigation measures to manage them throughout the process are outlined in the table below.

<b>Risk</b>	<b>Likelihood</b>	<b>Impact</b>	<b>Proposed Mitigation Measures</b>
Moving target: The system keeps changing with new network of courts and prosecution offices being implemented. This will make it challenging to provide a stable picture and analysis.	High	High	Data-based projections. Be explicit throughout the analysis of what is moving and what is not. Ensure that workshop discussions address moving targets and encourage institutions to demarcate. Recognize that whilst structures move, people and behaviors often remain.
Ambitious timeframe	High	High	Commence preparatory work, prioritizing data generation. Appoint two data collection consultants to work in tandem. Appoint contact points to ensure smooth information flow within institutions. Encourage stakeholders to prioritize the Functional Review.
Functional Review scope not covering what is needed to meet its aims	Low	High	Early agreement on the scope of the Functional Review.

Overlap with other activities in the justice sector	Medium	Low	<p>Desk review will be conducted early in the process. Parallel analytical work needs to be considered and coordinated as much as possible.</p> <p>Ongoing communication and encouragement to donors and agencies to be proactive in sharing views, reports, lessons etc.</p> <p>Serbian authorities and the EU/EC to also highlight where duplication is possible, so the Bank can work to complement and deepen previous assessment and data collection activities. Any data and analytical findings under the Functional Review that may be relevant for the IPA-funded activities will be made available to inform these activities where useful.</p>
Limited commitment or reluctance to share data.	Medium	High	<p>Stakeholder Group to address delays or unblock reluctance where appropriate. The risk of non-cooperation is higher with related institutions, such as police and prisons than with primary institutions. Leveraging existing relationships between primary institutions, such as SPC and EC, may be able to encourage their participation.</p>
Although the EC establishes timeframes for screening, Serbian national elections may be called which could impact availability and focus of stakeholders	High	High	<p>Work closely with those stakeholders that are less affected by the elections, including HJC, SPC etc.</p> <p>Continued engagement with all relevant sector institutions independently of political affiliation.</p>
Changes in leadership and staff.	Medium	Medium	<p>Continued engagement with all relevant sector institutions independently of political affiliation.</p>
Reluctance to disseminate findings, if they may be perceived poorly.	High	Medium	<p>Encourage stakeholders to see the Functional Review as a strategic opportunity in the accession negotiations. Launch event with media, donors and civil society to encourage broader stakeholder awareness and expectation that the Functional Review will be published and that findings will be disseminated.</p> <p>Justice suggestion and photo competition</p>

			to encourage broader stakeholder awareness and input.
Rejection of findings due to lack of ownership by institutions.	Medium	High	Early consensus on scope and methodology. Pro-active communication and expectation alignment throughout. Clear messages. Short documents. Face-to-face communication where possible.

## 10. RESOURCING THE FUNCTIONAL REVIEW

46. **The budget for the Functional Review is \$700,000.** The activity will be financed under the MDTF-JSS via a reallocation of funds from within the MDTF budget, which has been agreed with MOJPA and the MDTF-JSS donors.

47. **The nature of the task necessitates a significant commitment of staff resources over a short period.** The overall body of work will be led by the Functional Review Core Team, comprising MDTF TLL Klaus Decker, MDTF Coordinator Srdjan Svirčev and Justice Reform Specialist Georgia Harley. The work will be implemented leveraging expertise from various Bank units, for example, colleagues within the PREM network. The Functional Review seeks to draw on local and regional expertise to the extent possible, and has engaged in competitive recruitment of a team of local and international consultants with relevant expertise and experience in Serbia. The proposed task team is outlined in the table below. Requirements for management oversight and quality control, including peer reviewers, will also be significant. Finally, ACS support will be needed to manage the consultant transactions.

Name	Responsibility
<b>Functional Review Core Team</b>	
Klaus Decker	MDTF Task Team Leader, ECSP4
Georgia Harley	Functional Review Co-Leader, ECSP4
Srdjan Svirčev	Functional Review Co-Leader, ECSP4
<b>Local Experts</b>	
Jovanka Manić	Fiscal Data Collection Consultant
Dragon Obrenović	Caseload Data Collection Consultant
Marina Matić	Communication and Coordination Consultant
Olga Šipka	Desk Review Consultant
IPSOS	Multi-Stakeholder Justice Perception Survey
IPSOS	Running the Justice Competition
IPSOS	Access to Justice Analysis
[advertised]	Workshop Organizer
t.b.d.	Infrastructure Analyst
<b>Regional / International Experts</b>	
Pim Albers	Performance Framework Consultant
Alexey Proskuryakov	Financial Management Analyst
Kate Harrison	Human Resource Analyst
Ellen Kelly	Stakeholder and Institutional Analysis Adviser
Linn Hammergren	Functional Review Strategic Adviser

t.b.d.	ICT Analyst
<b>ACS</b>	
Hermina Vuković Tasić	Program Assistant, ECCYU
Susan Padilla	Program Assistant, ECSP4

## 11. QUALITY MANAGEMENT AND SUPERVISION

48. Given the size and visibility of the Functional Review, robust quality management and control are critical to ensure high quality and timely delivery. The Functional Review will rely on the established Bank procedures for quality control. The final deliverable report will be made subject to formal peer reviewing and decision meetings before submission to the client. Project costs include dedicated resources for a strategic advisor and for peer reviews. Results and monitoring will occur within the framework of the MDTF-JSS.

49. Following the experience under earlier functional reviews, the program will have an inception phase through October and November 2013 for detailed activity planning. Detailed terms of reference and task plans will be developed for each of the activities with timelines for delivering the agreed outputs. Monthly progress review meetings will be held by the Functional Review Core Team, with the participation of relevant team members, advisors and peer reviews as relevant.

*[Presentation]*