

# Annexes

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## Annex 1: Methodology

### A. Purpose and Structure of the Performance Framework

1. **The purpose of the Performance Framework is to provide an agreed structure for the measurement of judicial performance in Serbia.** The Framework outlines key performance measurement areas, performance indicators, relevant data, and pertinent European standards where possible. The Framework was developed based on European experiences (Box 37 below), and tailored to Serbia's specific context and its needs under Chapter 23.<sup>958</sup>

**Box 38: A Performance Framework Based on European Models**

*The Performance Framework draws on performance measurement areas, performance indicators, and standards currently used by advanced European judicial systems. For other Performance Frameworks in advanced judiciaries, refer to the quality management systems of the Dutch Courts (RechtspraakQ) and the Court of Appeal in Rovaniemi, Finland, as examples.*

*While the specific features of any Performance Framework will differ based on local context, priorities, and data availability, the basic approach is similar. The method consists in first defining relevant areas of performance to be measured. In the Netherlands, measurement areas originally comprised: (1) impartiality and integrity of judges; (2) expertise of judges; (3) personal interaction with litigants; (4) unity of law; and (5) speed and proceeding on time. Specific indicators are then assigned to these measurement areas. For example, to measure timeliness, the quality system in Rovaniemi uses as an indicator the extent to which cases are dealt with within the optimum processing times established for the organization of judicial work. The relevant standard is specified as well as the source of the data.*

*For further discussion, see Court Performance Measurement: International Perspectives and Approaches, World Bank 2014.*

2. **Based on the Performance Framework (at Annex 2), the Review assesses the system's external and internal performance.** The *external* assessment examines the performance of the judicial system in terms of the efficiency in judicial service delivery, quality of judicial services delivered, and access to judicial services. The *internal* assessment focuses on the inner functioning of the judicial system and its ability to manage resources for service delivery. Analysis is conducted on governance arrangements, as well as on the management of particular resources, including financial resources, human resources, ICT and infrastructure. The two are related: what happens in the inner workings affects the ability of the system to deliver externally to users, and linkages are made as appropriate. Together, these measurement areas capture the relevant indicators and cover the spectrum of performance in terms of judicial service delivery.

3. **The performance indicators were drawn from indicators commonly used in Europe, as well as from international guidance.** Draft indicators were developed and shared for consultation, and adjusted to suit the data environment and the particular challenges Serbia is likely to encounter during the Chapter 23 challenges. As a result some standard indicators are used (disposition rates, clearance rates, appeal rates, availability of ADR, etc.) and some novel ones have been identified (efficiency in service of process, number of pending utility bill cases, use of Opportunity, etc.) As a result, the Performance Framework is tailored to both the Serbian and the Chapter 23 contexts.

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<sup>958</sup> The Framework underwent a series of consultations with stakeholders from across the justice system, including via workshops held in Belgrade and Nis, and was refined over time to reflect feedback.

4. **The Performance Framework matches indicators and data with relevant European standards.** Some of the standards are binding, such as the right to a fair trial within reasonable time as guaranteed under Article 6 of the ECHR. While most of the standards are not strictly binding, such as recommendations by the Consultative Council of European Judges (CCJE) at the Council of Europe, these guidelines are commonly used as references in the accession process by candidate countries and the European Commission (EC). Such documents are therefore captured by the Performance Framework for guidance. However, very few of these standards and guidelines provide definitive quantifiable measures. There are also fewer standards for internal performance, and where they do exist, they are rarely explicit.<sup>959</sup> To complement the picture, cross-country data are used to place Serbia's performance in the context of EU Member States. The Review also highlights examples of practices, experiences and lessons from comparator states that could be applied in Serbia.

**Box 39: Capturing European Standards for Chapter 23**

**The Performance Framework matches indicators and data with relevant European standards and references wherever possible.** Many of these European standards are not easily quantifiable, and sometimes not explicit. The Performance Framework aims to provide data for all performance areas deemed relevant under Chapter 23 based on the European Commission's description of this Chapter:

*"EU policies in the area of judiciary and fundamental rights aim to maintain and further develop the Union as an area of freedom, security and justice. The establishment of an independent and efficient judiciary is of paramount importance. Impartiality, integrity and a high standard of adjudication by the courts are essential for safeguarding the rule of law. This requires a firm commitment to eliminating external influences over the judiciary and to devoting adequate financial resources and training. Legal guarantees for fair trial procedures must be in place. Equally, Member States must fight corruption effectively, as it represents a threat to the stability of democratic institutions and the rule of law. A solid legal framework and reliable institutions are required to underpin a coherent policy of prevention and deterrence of corruption. Member States must ensure respect for fundamental rights and EU citizens' rights, as guaranteed by the Acquis and by the Fundamental Rights Charter."*

See: [http://ec.europa.eu/enlargement/policy/conditions-membership/Chapters-of-the-Acquis/index\\_en.htm](http://ec.europa.eu/enlargement/policy/conditions-membership/Chapters-of-the-Acquis/index_en.htm).

## B. Data Sources for the Performance Framework

5. **A range of data is needed to ensure that assessments against indicators and standards are meaningful.** The Performance Framework therefore matches each indicator with a data source, specifies where the data can be found in the Serbian system, and how frequently they are captured. The Functional Review draws on a mix of quantitative and qualitative data. To provide as objective and comprehensive a picture as possible, assessments are made only after triangulating and corroborating multiple quantitative and qualitative data sources.

6. **At the outset, the Functional Review undertook a Desk Review of recent existing work relating to justice reform in Serbia.** The Desk Review catalogues recent analytic work and is available at <http://www.mdftjss.org.rs/en/serbia-judicial-functional-review>

7. **The Functional Review obtained and analyzed significant amounts of quantitative data from within the Serbian system covering the period from 2010 to 2014.** In Serbia, much of the relevant and available data originates in case management systems and in human resources and finance systems.<sup>960</sup> One of the challenges

<sup>959</sup> For example, the European Charter on the Statute of Judges posits that 'the State has the duty of ensuring that judges have the means necessary to accomplish their tasks properly and in particular to deal with cases within a reasonable period.' However, it does not specify what an appropriate level of financial or human resources would be. These are matters for individual states to determine, although analysis of the experience of other European States is often instructive.

<sup>960</sup> The Functional Review relies on caseload, financial and human resources data from the SCC, including for the 2013 calendar year. The HJC has created a dashboard system, BPMIS, which collects some of the same data as well as some resource management information not collected in the reports submitted to the SCC. For example, BPMIS contains information the age and condition of ICT

with data is that information is captured in a non-systematic and inconsistent manner, and is not conducive to analytical work. Also, much of the data gathering is made in an ad-hoc fashion with much duplication and occasional errors (see Box 39 below), requiring considerable data processing and triangulation. On a positive note, the data environment in the Serbian judiciary is richer than ever before. The next step will be to support the system to improve data quality and consistency and use data to inform decision-making.

**Box 40: A Cautionary Note on Case Management Statistics**

**Serbia's system for registering case data records a large amount of information but unfortunately does not work to its anticipated capacity.** Databases are still localized at the court level and the exchange of information among them is not automatic, requiring manual inputting of data transferred from one court to another. This transfer duplicates work, is time-consuming, reduces efficiency, and introduces errors. There is a centralized database managed by the SCC and another, the Budget Planning and Management Information System (BPMIS), recently introduced by the HJC. Both consolidate statistical reports sent periodically by the individual court units.

**This arrangement presents several challenges to any assessment of performance.** First, the Review analysis depends on the pre-determined standard statistical reports submitted to the HJC and the SCC. Therefore, it is exceedingly difficult to run advanced reports for in-depth analysis without requesting all Courts to provide relevant data, suggesting that statistical reports are either not carried out or not effectively so. Also, the existing systems do not help checking for validity of submissions or entries at the court level. As a result, the data contain numerous yet minor errors, and only an audit of courthouses could help identify the correct data, a task well beyond the scope of the Functional Review. Third, some Courts do not provide the required reports, submit them late, or send information that is visibly incomplete.

**Overall, the accuracy of data generated by the system cannot be fully guaranteed but key trends have been captured.** Wherever possible, the AVP data have been triangulated with BPMIS data, qualitative data from interviews, surveys, and workshops to validate findings.

8. **Data from within the system was supplemented by extensive survey data.** Most European Courts commission user surveys to gauge user perspectives on performance aspects. In Serbia however, court user surveys are not conducted within the system. To fill this gap, the World Bank carried out a series of perception-based surveys, described at Box 40 below.

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and other equipment and specific data about the use of contractual services, divided into a) experts, b) attorneys and c) professional services. These additional data fields allow for more rigorous analysis of resource needs. However, because BPMIS was only implemented in 2013, it does not allow for comparison with data from 2011-2012, also relied upon in the functional review. In addition, differences in caseload data between that submitted by the courts to the SCC and that submitted by them to the HJC suggest that there are data errors in BPMIS. In part, this is because data entry in BPMIS is manual and after statistical data is submitted to the SCC by the courts. Courts report that they made adjustments to some of their initially submitted data when providing it to the HJC for BPMIS.

**Box 41: Surveys Conducted for Functional Review**

**Multi-Stakeholder Justice Survey 2009/2010 and 2013:** The Survey measure perception on a range of issues, including perceptions of timeliness, costs, quality, and experiences of corruption. The original 2009/2010 survey was replicated and in 2013. The follow-up survey measured progress against the baseline and was also expanded to include new questions. Each survey has a representative sample of over 6,000 respondents. Respondents include general populations (divided into users and non-users), managers of private sector enterprises (divided into users and non-users), lawyers, judges, prosecutors, and administrative staff. From the two surveys, tens of thousands of data points now exist on a range of issues relevant to perceptions of justice in Serbia, and developments can be compared against the 2009 baseline.

**Access to Justice Survey in 2013:** In an effort to overcome the challenges commonly associated with collecting and analyzing data on access to justice, the Functional Review undertook a two-part survey. First, face-to-face interviews were conducted with a representative sample of 1,003 respondents in their households across 67 municipalities and 127 local communities in both suburban and urban settings. Respondents discussed the kinds of disputes they and their households experienced, whether they considered taking them to court, and what deters them from using court services. Second, focus group discussions were conducted to gain a deeper understanding of behaviours, attitudes, and motives from specific target populations including economically active urbanites, rural farmers, owners of micro and small private enterprises, and members of LGBT populations. The focus groups consisted of 90-minute rounds with eight participants per session.

9. **Given the importance of the ‘implementation gap’ to Chapter 23 negotiations, the Functional Review also generated a series of Process Maps.** A Process Map measure the number and type of procedural steps that court users are required to take for a particular type of case to be decided from the beginning until a first-instance merits decision – both under the law (a *de jure* map) and in practice (a *de facto* map) – and then compares the two. Researchers mapped out *de jure* and *de facto* case processing for four particular procedures: a divorce proceeding, a domestic violence case, an eviction case, and the enforcement of a utility bill. Expert assessments were made based on the key informant interviews and with legal experts and practitioners specializing in the case type in question. The process maps are published separately and are available at [www.mdtfjss.org.rs](http://www.mdtfjss.org.rs).

10. **In addition, more than 150 interviews were conducted with stakeholders, along with over 40 field visits and around 15 workshops and forums.** In interviews and workshops, the Functional Review team sought views from stakeholders on performance against relevant indicators, as well as perceived reasons as to why prevailing conditions exist. The team obtained datasets and sought explanations to triangulate data. In doing so, the team heard from stakeholders about experiences, innovations and insights relating to justice service delivery in Serbia. Participants included judges, prosecutors and court staff from all court types, as well as professional organizations and CSOs.

11. **Further, two Justice Competitions were held to gain feedback and insights from the general population into the Functional Review process.** In the Suggestion Competition, entrants submitted their recommendations to improve justice service delivery. In the Photographic Competition, entrants submitted their best photographs depicting what they think justice in Serbia will look like upon EU accession. Two winners from the competitions were each awarded USD 1,000 in a ceremony presided over by the President of the Supreme Court of Cassation. Recommendations of short-listed entrants were considered through the Functional Review process and appear throughout this Report. Photographs from short-listed entrants also appear throughout this Report.

12. **Cross-country data is also used to benchmark the relative performance of the Serbian judiciary to complement explicit EU standards in the context of comparative systems in Europe.** While comparison cannot substitute for tangible standards, they can fill gaps and put the performance of the Serbian system in a European context. To carry out cross-country comparisons, the Review uses additional data sources such as the cross-country statistics on judicial systems collected by the European Commission for the Efficiency of

Justice (CEPEJ) at the Council of Europe, or the Global Competitiveness Report of the World Economic Forum (refer to Box 41 below).

#### **Box 42: Cross-Country Data**

*The Review uses a number of international data sets to put the performance of Serbia's judicial system into a comparative perspective.*

*The **CEPEJ** collects statistics and other data from the Ministries of Justice of the Council of Europe's 47 member States on a biennial basis, focusing largely on quantifiable aspects of the functioning of judicial systems. The 2012 CEPEJ Report covers the 2010 reporting period for EU Member States and Serbia.*

*Building largely on the CEPEJ data and methodology, the **EU Justice Scoreboard** provides comparative data on the quality, independence, and efficiency of justice systems in EU Member States only, focusing on litigious civil and commercial cases as well as administrative cases in order to assist Member States in their efforts to improve business climate. The 2014 Justice Scoreboard covers the 2012 reporting period for EU Member States. To supplement this, the Functional Review compares the Scoreboard data with Serbia's responses to the CEPEJ 2014 Questionnaire, which also relates to the 2012 reporting period.*

*The **Life in Transition Survey** carried out in 2006 and 2010 by the European Bank for Reconstruction and Development (EBRD), together with the World Bank, captures performance aspects from a court user perspective such as satisfaction with service delivery in Courts across Europe.*

*More globally, the **Rule of Law Index** developed by the World Justice Project and published annually for currently 99 countries measures 47 indicators organized around eight themes: constraints on government powers, absence of corruption, open government, fundamental rights, order and security, regulatory enforcement, civil justice, and criminal justice. The **Bertelsmann Transformation Index (BTI)** measures the general level of rule of law for 129 developing and transition countries, similar to the World Bank's **Worldwide Governance Indicators** since 1995 currently for 215 economies. Transparency International's **Global Corruption Barometer** measures the direct experiences of bribery and details views on corruption in the main institutions across 107 countries via a survey of more than 114,000 respondents. Its **Corruption Perceptions Index** also measures the perceived levels of public sector corruption in 177 countries and territories.*

*From a business perspective, the World Bank's annual **Doing Business** report measures, among other things, the time, cost (e.g., attorney fees, court fees), and number of procedural steps it takes in 189 economies worldwide to enforce a standard commercial case through the court system. The World Economic Forum's annual **Global Competitiveness Report** assesses certain aspects of the effectiveness of the judicial systems in 148 economies. These aspects include judicial independence and the legal system's efficiency of settling disputes and challenging Government regulations. The **Business Environment and Enterprise Performance Survey (BEEPS)** is carried out periodically by the EBRD and World Bank across 30 countries in Europe and Central Asia, and assesses the frequency of payments of bribes to Courts among other issues.*