

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

**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.

**BACKGROUND**

2. **Serbia intends to further accelerate its justice sector reform process.** 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 further strengthen capacities of the High Judicial Council (HJC) and the State Prosecutorial Council (SPC) 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 in many features of the current system. The strategy also aims to strengthen the framework for recruitment, evaluation, discipline and ethics within the judiciary. It provides for an increase in resources for the Judicial Academy and makes 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 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

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

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.

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.** The Functional Review will assist in two ways. First, by providing a data-rich assessment of current performance, the Functional Review will provide a natural baseline to enable Serbia to assess the impact of future justice reform initiatives. Second, by outlining options and recommendations, the Functional Review can 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 present 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's support for the Functional Review process through the MDTF-JSS.** The MDTF-JSS, financed by contributions from key international development partners, is partly executed by the World Bank and partly executed 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 for 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, under Component 1 which covers Bank-executed technical assistance and advisory services to support the Serbian justice sector reform.

## **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 support the Review process 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 experience in supporting client countries in functional reviews in the ECA region.** This Functional Review will draw on the experience of similar reviews conducted by the Bank, including most recently in Romania, with innovations to incorporate lessons learned and tailoring to suit the Serbian context. This includes: a deliberate data generation effort to capture user perceptions and access to justice aspects; systematic outreach to the broader public, including a photo and suggestion competition to generate ideas; and appointment of designated full-time team member based in Belgrade for proactive communication with all stakeholders.

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 support 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.

## **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 assessing the current functioning of the institutions of the broader judicial system in Serbia and outline options, recommendations and risks to inform Serbia's ongoing and planned justice reform initiatives in view of EU accession. In doing so, the Review will also provide a sound and solid empirical basis to enable Serbia to assess the impact of future justice reform initiatives compared to current justice system performance. The Functional Review will not, however, advice on EU accession compliance.

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.

## **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*'. This scope is both wide and deep, and noting the timeframe for the assessment, the Functional Review Core Team will prioritize tasks and aspects within this scope based on data availability and relevance to the achievement of the Acquis and national policy objectives.

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 and perceptions of corruption in the judicial system. 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, their geographic distribution, 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, and it is acknowledged that some systems will generate more data than others. The Functional Review will place 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. As the standards required to comply with Chapter 23 are not always precise or readily quantifiable, providing such data-rich and objective baseline information is intended to inform the accession negotiations.

**17. The Functional Review will explore and explain variations in performance in the delivery of justice services.** It will seek to identify challenges, gaps, needs or dysfunctions and explain why they occur it will also seek to identify performance successes within the justice system, analyzing why these have occurred and how they may be 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 factors affecting performance, possible risk mitigation measures and criteria for future evaluation of performance and risks. 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.

**18. Within the scope, a distinct characteristic of this Functional Review will be a strong emphasis on the measurement and management of the justice system performance.** In this respect the focus will be on the data, particularly on collecting, generating, and organizing data to measure and manage justice system performance. To assess the performance challenges and to identify needed data, the Functional Review will provide a justice performance framework. In the process of design of the justice system performance framework, the Functional Review will build among others on previous publications and assessments of justice system performance such as the EU funded Evaluation of the Rule of Law Sector, the JPEIR 2010 etc.

**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.

## **TIMEFRAME**

**20. The Functional Review is expected be completed by around July 15<sup>th</sup>, 2014 so that the results can 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. A proposed Implementation Schedule is at **Annex 3**.

21. Within each of the Components outlined below, work will be prioritized based on data availability and relevance to enable the assessment to be available by July 15<sup>th</sup>, 2014. Issues which do not receive fulsome focus in the Functional Review within this timeframe could then be flagged for more detailed analysis at a future time, for example, via follow-up technical assistance under the MDTF-JSS.

## COMPONENTS AND ACTIVITIES FOR THE FUNCTIONAL REVIEW

22. **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.

### COMPONENT 1: PERFORMANCE FRAMEWORK

23. **The first component will focus on establishing a justice system performance framework and 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.

24. **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. An extract from the draft Performance Framework is provided below. 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.

Performance measurement area	Indicator	Primary data collection method within the Serbian system	Frequency of data collection within the Serbian system	Source of data/information
Efficiency in the delivery	1.1.1 Total number of incoming cases per case type	Statistics	Quarterly	MOJPA, courts, HJC, SPC,

of justice services	(including enforcement)			Prosecutor offices/RPPO
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**COMPONENT 2: PERFORMANCE AND JUSTICE SERVICE DELIVERY:  
BASELINE AND CHALLENGES IN THE SERBIAN JUDICIAL SYSTEM**

25. **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**

26. **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 relevant analytic works is at **Annex 1**.

**ii. Data Collection**

27. **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**

28. **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**

29. **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. Semi-structured interviews will be conducted with relevant stakeholders to provide the qualitative data needed for this analysis. 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, the distribution of power and influence between stakeholders and the processes that create, sustain and transform their relationships, as well as drivers for change and opportunities to align stakeholder incentives to improve service delivery. The analysis will also inform the risks to be outlined in the Functional Review to ensure that stakeholder and institutional barriers and risks to improving justice service delivery may be mitigated.

#### **v. Access to Justice Analysis**

30. **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 groups 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.

31. **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**

32. **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 in terms of justice service delivery. This context is relevant, given that Chapter 23 standards are not always readily identifiable or quantifiable in the abstract. 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**

33. **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.

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

34. **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.

#### **viii. Financial Resource Analysis**

35. **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.

## **ix. Human Resource Analysis**

36. **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.

## **x. ICT Analysis**

37. **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.

## **xi. Infrastructure Analysis**

38. 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.

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

39. **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. Wherever and to the extent possible, the findings and recommendations of the review will be linked clearly and specifically to Chapter 23 of the *Acquis*, the National Judicial Reform Strategy 2013-2018 and the Country Partnership Strategy for the Period 2012-2015. The recommendations could thus 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*.

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

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

## **COMMUNICATION AS A CROSS-CUTTING ISSUE**

### **ENGAGEMENT WITH KEY STAKEHOLDERS**

41. As key players in calling for the Functional Review, the Government of Serbia and the EC will play important roles in the process. They have agreed on the design and scope of the analysis and have conveyed documents for inclusion in the desk review. They will provide information, participate in workshops and meetings and receive monthly progress updates. They will receive drafts of the analysis for contribution and comment, although neither may approve or veto the analysis, noting that technical oversight remains with the Bank as a Bank-executed activity.

42. **The Functional Review team will create a Stakeholder Consultation Group**, which will comprise representatives of the Serbian 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.

43. **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 Serbian justice 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.

## **ENGAGEMENT WITH BROADER STAKEHOLDERS**

44. **The process and content of 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 in accordance with the World Bank's disclosure policy.

45. **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 will take place each quarter between December 2013 and July 2014 as the Functional Review progresses. NGOs will 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. Interested donors will also be provided with periodic updates on progress, given their interest in the Functional Review and its implications.

46. **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.

## FUNCTIONAL REVIEW RISKS AND MITIGATION OPTIONS

47. **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. Overall given that the scope and timeframe for the task are ambitious, the task is considered high risk. Some adjustment in the scope and timeline of the task may be expected in the course of implementation.

<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 and significant scope.	High	High	Mid-term review by World Bank management. 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. Within each Component, prioritize issues and narrow the focus of tasks to enable completion. 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	Desk review will be conducted early in the process. Parallel analytical work needs to be considered and coordinated as much as possible. Ongoing communication and encouragement to donors and agencies to be proactive in sharing views, reports, lessons etc. 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.
Limited commitment or reluctance to share data.	Medium	High	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.
Although the EC establishes timeframes for screening, Serbian national elections may be called which could impact availability and focus of stakeholders	High	High	Work closely with those stakeholders that are less affected by the elections, including HJC, SPC etc. Continued engagement with all relevant sector institutions independently of political affiliation.
Changes in leadership and staff.	Medium	Medium	Continued engagement with all relevant sector institutions independently of political affiliation.
Reluctance to disseminate findings, if they may be perceived poorly.	High	Medium	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. Justice suggestion and photo competition 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.

## RESOURCING THE FUNCTIONAL REVIEW

48. **The budget for the Functional Review is \$700,000.** The budget allocation is financed under the MDTF-JSS and is thus drawn from MDTF donor contributions. The budget allocation was effected via a reallocation of funds from within the MDTF budget to supplement Component 1 of the MDTF-JSS, which is dedicated to Bank-executed technical assistance and advisory services. The budget allocation has been agreed with MOJPA and the MDTF-JSS donors.

49. **The Bank will have exclusive oversight of the implementation of the activity. 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 Svircev 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.

<b>Name</b>	<b>Responsibility</b>
<b>Functional Review Core Team</b>	
Klaus Decker	MDTF Task Team Leader, ECSP4
Georgia Harley	Functional Review Co-Leader, ECSP4
Srdjan Svircev	Functional Review Co-Leader, ECSP4
<b>Local Experts</b>	
Jovanka Manic	Fiscal Data Collection Consultant
Dragon Obrenovic	Caseload Data Collection Consultant
Marina Matic	Communication and Coordination Consultant
Olga Sipka	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
Kate Harrison	ICT Analyst
<b>ACS</b>	
Hermina Tasic	Program Assistant, ECCYU
Susan Padilla	Program Assistant, ECSP4

## **QUALITY MANAGEMENT AND SUPERVISION**

50. 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 and approval by Bank management. 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.

51. 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.



**Tentative List  
Relevant Analytic Works for the Desk Review**

1. National Judicial Reform Strategy 2013-2018 and implementing action plans;
2. Supreme Court of Cassation Annual Reports;
3. SPC Annual Reports;
4. Fiscal Impact Analysis of the Free Legal Aid Law;
5. FR supported by SIDA for the MoJPA;
6. WB Justice Perception Survey 2010;
7. MDTF supported ICT strategy for the justice sector;
8. MDTF JPEIR 2010;
9. Indicators for the justice sector (developed within the framework of MDTF - now focused/being integrated into the NJRS);
10. USAID project report/analysis on the court efficiency, backlog reduction, facility management in misdemeanor courts;
11. EU progress reports;
12. 2013 EU Justice scoreboard
13. EU Enlargement Strategy and Challenges 2013-2014
14. OSCE reports, including OSCE Report on Business Corruption in the Western Balkans 2013 and raw data;
15. GIZ analysis of the legislation drafting process;
16. IMG progress reports and reports on equal opportunity in justice, justice efficiency etc;
17. Sector assessment for rule of law which is ongoing (IPA financed);
18. Justice experts under the PPF 5 support for the future programming of IPA 2014-2020 (including the development of the NAD and indicators) ;
19. IPA 2012 judicial efficiency project (which will, amongst other deliverables, produce a 'Process improvement review' and a 'Data integrity review' for all courts of general jurisdiction) and any other possibly related activity of different donors;
20. Related IPA 2012 and 2013 projects;
21. ECtHR judgments on article 6 ECHR and related recommendations;
22. CEPEJ cross-country reports and raw data (including 2012);
23. ABA-CEELI reports;
24. Support for Improvement in Governance and Management (SIGMA) assessments and reports for 2011, 2012 and 2013
25. Answers to the European Commission's questionnaire on Chapter 23: judiciary and fundamental rights – January 2011
26. Council of Europe gap analysis on corruption in the judiciary (due in December 2013);
27. Venice Commission's reports on Serbia judicial system (including the last ones on judicial Laws of spring 2013)
28. Upcoming EC Screening report on Chapter 23 for Serbia (March/April 2014).
29. Political Economy of Reform in Western Balkans, World Bank, 2013

### Reference List for Chapter 23 Issues Coverage

While the Judicial Functional Review aims at informing the accession negotiations between the European Commission and the Republic of Serbia, its scope will not cover each and every aspect of chapter 23.

“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.”<sup>2</sup>

Based on the scope of the Judicial Functional Review as set out in the Concept Note, the table below provides an overview of those aspects that will be addressed by the Functional Review and those that will not.

Addressed	Not addressed
<b>JUDICIARY</b>	
<u>Independent Judiciary:</u> Perceptions of independence, human resource management aspects of independence, financial management aspects of independence, effectiveness of legal framework in guaranteeing judicial independence	<u>Independent Judiciary:</u> Assessment of the 2009 reappointment process
<u>Efficient Judiciary:</u> Case disposition, backlog, timeliness, procedural efficiency, cost, internal management, strategic and operational management, human resource management	
<u>Impartiality:</u> Perceived impartiality and fairness	
<u>Integrity:</u> Perceived integrity, effectiveness of	

<sup>2</sup> Summary of chapter 23 scope, available online at [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).

disciplinary system	
<u>High standard of adjudication:</u> Perceived quality of judicial services, appeal and reversal rates.	<u>High standard of adjudication:</u> There will be no case-file analysis to assess consistency of case-law and quality of judicial decisions
<u>Elimination of external influences:</u> Perceptions of independence and integrity, level of trust and confidence, transparency, effectiveness of legal framework to guarantee independence	
<u>Provision of adequate financial resources:</u> Financial resources and their management, budget planning, budget allocation, budget execution.	
<u>Provision of adequate training:</u> Effectiveness of Judicial Academy in providing training.	<u>Provision of adequate training:</u> There will be no in-depth analysis of the functioning of the Judicial Academy per se
<u>Legal guarantees for fair trial procedures:</u> The evaluation of fairness is part of the performance analysis (under quality of judicial services)	<u>Legal guarantees for fair trial procedures:</u> Such guarantees will in general not be evaluated.
<u>Fight against corruption:</u> The overall effectiveness of the judicial system will be assessed, including its ability to process corruption cases.	<u>Fight against corruption:</u> There will be no specific analysis about the effectiveness of the prosecution service and the police in fighting against corruption. Prisons will not be covered.
<u>Solid legal framework:</u> Perception of quality of legislation will be included as well as the laws regulating the functioning of the judiciary.	<u>Solid legal framework:</u> There will be no general assessment of the civil, criminal, civil procedure and criminal procedure code or an assessment of overall quality of legislation in Serbia.
	<u>Reliable institutions:</u> While the capacity of the Judiciary will be assessed and vulnerabilities identified, there will be no prediction on their reliability.
<b>FUNDAMENTAL RIGHTS</b>	
<u>Respect for fundamental rights:</u> The Functional Review will assess the quality of services provided by the judiciary and to the extent to which timeliness, access and other aspects of judicial service delivery are guaranteed as fundamental rights, e.g. by article 6 of the European Convention on Human Rights, they will be part of the performance analysis.	<u>Respect for fundamental rights:</u> There will be no comprehensive and explicit human rights analysis or an analysis of the overall compliance with fundamental rights.

## Implementation Schedule

Date	Activity
January	Data collection. Data processing/organization
	Draft performance framework table. Performance Framework Workshop
February	Data analysis
	Draft Performance Framework narrative
	Draft Performance Assessment
	Draft Resource Analysis (overall management, HR, Finance)
March	Draft Resource Analysis (ICT, Infrastructure)
	Draft Access to Justice Analysis
	Draft Cross-Country Analysis
	Draft Desk Review
	Draft Survey Analysis. Survey Workshop.
	Preliminary Results / Hypotheses Testing Workshop
	Bank management mid-way review meeting
April	Preliminary Results / Hypotheses Testing Workshop (cont'd)
	Draft Recommendations & Risks
	Competition award selection process
	Preliminary Results / Hypotheses Testing Workshop
May	Final drafting & Exec summary
	Recommendation and Risks Workshops
	Competition awards
June	Formatting & annexes

	Bank peer review & management approval
July	Printing & translation
	Publication & presentation
	1 <sup>st</sup> dissemination workshop. Competition award announcements.
September	Further dissemination workshops