

## REPUBLIC OF SERBIA

### MULTI DONOR TRUST FUND FOR JUSTICE SECTOR SUPPORT TF071444

#### AIDE MEMOIRE

27 September – 4 October 2013

#### A. INTRODUCTION

1. **A World Bank team visited Belgrade from 27 September to 4 October 2013, to provide implementation support to the Serbia Multi Donor Trust Fund for Justice Sector Support (MDTF-JSS).** The mission was led by Mr. Klaus Decker (Senior Public Sector Specialist and Task Team Leader, ECSP4). The mission also comprised Mr. Gregory Kisunko (Senior Public Sector Specialist, ECSP4), Ms. Georgia Harley (Public Sector Specialist, ECSP4), Mr Domagoj Ilic (Consultant) and Mr Daniel Mullins (Consultant). The mission was joined from Belgrade by Mr. Srdjan Svircev (Public Sector Specialist, ECSP4, Program Coordinator), Mr. John Furnari (Consultant) and Ms Jovanka Manic (Consultant).
2. **The objectives of the mission were to:**
  - a. prepare to launch the Judicial Functional Review;
  - b. advance the work on the Justice In Serbia Multi-Stakeholder Perception Survey;
  - c. progress work on the draft free legal aid law and the fiscal impact analysis of legal aid options;
  - d. convene a Management Committee Meeting, and;
  - e. address 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 and other development partners.** The team expresses its gratitude to all the stakeholders met, particularly to the Government and the Judiciary for their hospitality and cooperation. 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
Functional Review of the Justice System	Meeting on scope in early November 2013 Launch in November 2013 Data generation complete in March 2014 Review completed by mid-2014	World Bank team
Performance Management Framework for the Serbian	Framework due December 2013	World Bank team

Justice Sector		
Update of the MDTF-JSS website	Website design complete by December 2013	World Bank team
Justice in Serbia Survey	Subject to agency approval, field work to commence in November 2013 and completed in December 2013. Data due in March 2013.	World Bank team
Fiscal impact analysis of free legal aid options	Draft report due early November 2013 and final draft due late November 2013	World Bank team
Reform and Accession Facilitation Unit	MOJPA Proposal due October 2013.	MOJPA
Review of the Criminal Chain Process Analysis	Subject to agency approval, field work to commence in October 2013.	World Bank team
Update of the MDTF Program Framework	Update commenced by November 2013	World Bank team

5. **The team was approached by MOJPA with the suggestion to continue the Reform Facilitation Unit (RFU) and increase the number of consultants working in the unit.** Based on the current agreement, the RFU was intended as a short-term gap-filling measure and will expire on 31 December 2013. The unit had been co-financed on an 80/20% cost-sharing arrangement, but since 2012 has been 100% financed by the MDTF. It was agreed by all that the added capacity that the RFU provides is useful for MOJPA, and will continue to be so, especially in the upcoming accession negotiations. The team raised concerns about the sustainability of such capacity filling if the RFU was extended on the same basis as it currently operates. The team reminded the MOJPA as well as all the donors at the Management Committee Meeting that the Mid-Term Review had found that “The long-term capacity building of the MOJPA should be the top priority. While the RFU can help fill the existing technical gap within the MoJ, the ultimate challenge is to build a critical mass of qualified civil servants within the MoJ. Budgetary restrictions, as well as the lack of a comprehensive HR strategy, are challenges to be addressed”.
6. **The mission discussed options with MOJPA to address this sustainability challenge.** Following up on a meeting between the Country Manager and the Minister of Justice and Public Administration, the team prepared a menu of options to build sustainability and capacity building in these kinds of units, and shared the menu with MOJPA to allow for incorporation of some of these suggestions into the proposal to be submitted for MDTF-JSS approval by MOJPA. These options include co-financing modalities, in-kind contributions as well as suggestions related to work planning, a combination of which could increase capacity within the MOJPA in a more sustainable way to address the concerns raised by the Mid-Term Review. The full list of these menu options is attached in **Annex 2**.
7. **A Management Committee meeting was held on 3 October 2013.** Minutes of the meeting are at **Annex 3**. The key decision points of the meeting were as follows:

- a. The meeting agreed to adopt a more consultative format for future Management Committee meetings, based on key decision points and in an effort to share and receive more substantive information to progress MDTF activities;
- b. The meeting agreed in-principle to support the creation of a Reform and Accession Facilitation Unit (RAFU), subject to conditions to build in sustainability and long-term capacity within the MOJPA. MOJPA will prepare a written proposal, which will be circulated for comment and approval in writing, and;
- c. The meeting agreed that donors and the MOJPA would provide substantive comments on the Functional Review Handout (at **Annex 4**).

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

8. **Preparations have commenced for the Functional Review.** The team confirmed with MOJPA, the EC Delegation in Serbia, the High Judicial Council (HJC) and the State Prosecutorial Council (SPC) that the Functional Review of the Serbian Justice System should be the main analytical work produced by the MDTF in the incoming year. Key stakeholders expressed their commitment and support for such an analysis and reiterated the high level of importance that this analysis will have to the EU accession negotiations. To enable this work to commence, the MOJPA and all MDTF donors agreed over the summer to a reallocation of \$700,000 from Recipient-executed part of the Trust Fund to Bank-implemented advisory services. An amendment has been prepared to the Administrative Agreement between the EU and the World Bank to reflect this change, and the amendment awaits signature by the EU. The team met with the EC Delegation to discuss finalization of the draft amendment. In the interim, the team has commenced preparatory work.
9. A Functional Review discussion handout (at **Annex 2**) has been circulated for comments to the client and the donors. Additional discussions between the EU Commission and MOJPA are needed to clarify the exact scope of the Functional Review. A workshop with EU and representatives of Serbian Justice institutions (e.g. MOJPA, HJC, SPC) has been tentatively scheduled for this purpose for November 7. An official launch event including press conference will be organized later this year in Belgrade.
10. **The team agreed to engage a consultant following the end of the mission to develop the performance framework for the justice system, which will provide the basis for the Judicial Functional Review.** Initially designed as a free-standing activity, this assignment will now be fully integrated into component 1 “Performance Baseline” of the Review. Various candidates have been approached and the selection will be carried out as soon as possible. The intention is to have the consultant join the team in time to participate in the planned workshop on the exact scope of the Review with the Serbian authorities and the EC.
11. **The team continued the preparation of the follow-up to the 2010 Justice in Serbia Survey, working closely with the local consultancy firm and key government stakeholders.** Ahead of the mission, the team requested and received comments and suggestions on the draft questionnaires from the key stakeholders. Based on the feedback provided, the local consultant firm (IPSOS) updated the draft questionnaires and distributed to stakeholders ahead of a joint workshop that was held on 3 October 2013. The participants

in the workshop finalized the outstanding issues, but requested additional time to share the final questionnaires with their organizations' leadership before approving them formally.

12. Once the questionnaires have been approved, the team will finalize them and make necessary preparations for the fieldwork. The local consultancy firm will complete the following tasks:
  - a. review, compare and clean 6 questionnaires in Serbian (3 days);
  - b. match six questionnaires in Serbian with six questionnaires in English (3 days);
  - c. check the 2013 versions of all questionnaires with 2010 questionnaires (3 days);
  - d. run a small pilot with questionnaires 2013 (4 days);
  - e. correct if necessary all the questionnaires based on pilot results, and finalize them (1 day);
  - f. receive an approval from the WB team as soon as possible;
  - g. derive samples (2 days);
  - h. print 8,000+ questionnaires (over 120,000 pages in total) and distribute them to various regions in Serbia (7 days);
  - i. finalize and print interviewer manuals (4);
  - j. recruit and train the interviewers among the IPSOS interviewers network (4 days) (total 27 calendar days, although some steps can be accomplished simultaneously)
13. Fieldwork is then expected to commence in early November 2013, assuming that agencies formally approve the questionnaires in the agreed timeframe and that there are no requests for significant changes.
14. **The team continues to provide support to the development of the Free Legal Aid Law.** During the mission period, MOJPA led its Free Legal Aid (FLA) Law Working Group in a 3-day working retreat designed to reach consensus on a number of outstanding issues that had proven challenging to resolve throughout the duration of the MDTF-JSS Project. The main issues discussed include:
  - a. Expanded Access for Indigent/Vulnerable Defendants: Access to (or informed waiver of) representation in all criminal cases involving indigent and/or vulnerable defendants facing potential prison terms of any length;
  - b. Ensuring FLA in Municipalities Without Services: Minister of Social Welfare and Labor (MSWL) will offer primary FLA services, to be delivered by legal professionals in the approximately 120 municipalities which do not already provide legal aid services;
  - c. MSWL-led eligibility process: A streamlined FLA eligibility determination for secondary FLA cases capitalizing on MSLW knowledge/experience with target groups and MSLW's expansive municipal coverage, with MoJPA (1<sup>st</sup> tier) and Administrative Court (2<sup>nd</sup> tier) review;
  - d. Expanded Secondary Provider Definition: FLA providers will include advocates and non-advocate legal professionals possessing a bar exam and a law degree, thus municipalities may represent in court in cases to be defined by regulation;
  - e. State-led, Independent FLA Quality Control: the quality control system will invite advocate participation, but not control, over the auditing and investigative power of MOJPA. Matters worthy of discipline or removal from the FLA Registry will be reviewed by an independent Quality Control Commission.

15. In terms of next steps for the FLA law, the MOJPA has tasked its RFU Access to Justice Consultant to lead core Working Group members to complete the technical drafting of the FLA law by the end of October, and public debate will take place in November. With the FLA Law slated for adoption by December 2013, and implementation by Q3 of 2014, MOJPA will seek a Council of Europe assessment of the draft law in November, and also plans to draft an FLA Law Implementation Workplan as well as a number of subsidiary FLA regulations in the months ahead.
16. **The team progressed work on the Fiscal Impact Analysis of Legal Aid Options.** The team delivered a presentation to the working group at the FLA retreat on the fiscal impact analysis, including its methodology, status, preliminary findings and needed decisions and data to complete the assessment. To produce an analysis that serves the Ministry's and the Working Group's needs, additional inputs and assistance are needed, and the working group agreed to provide this. Critical data requirements in the areas of case costs, municipal demographics and court expenditures were identified. Interviews with working group members were held to establish case time commitments and cases costs. Follow-up interviews in the Belgrade Civil Division of the Basic Court and the Family Law Division of the New Belgrade Court were conducted to establish the existence of advocate billing statements in court records and to identify a method to acquire a sampling of 30 such statements for each major court case type. Team members also met with executive officials of IPSOS Strategic Marketing and it was agreed that they would assist in providing basis municipal data and contact information for access to additionally needed demographic data. It was determined that YUCOM would be engaged to complete the comparative country component of the fiscal impact analysis, including in Bosnia (Brcko), Croatia, Lithuania, Slovenia and Montenegro. A draft report will be delivered to the MDTF management team in early November, with a view to finalizing the report in November, so that its analysis can have maximum relevance for MoJPA's final policy and funding decisions in the November/December period.
17. **The team reviewed progress on the Review of the Criminal Case Process (RCCP) with a view to prioritizing finalization of this activity.** The team reviewed the amended case file review questionnaires drafted by the local consultancy firm, MEGA. The MEGA team will shortly be returning to RCCP sites for case file reviews. Site visits at the courts, prosecutor's offices and police offices is subject to additional approvals by the HJC, SPC and Ministry of Interior. The team is working with stakeholders to secure these approvals and address this delay.
18. **Based on the recommendations of the Mid-Term Review, the team initiated revision and update of the MDTF-JSS Performance Framework.** While the team has taken stock of the recommendations of the Mid-Term Review and drafted TOR, the update had been put on hold over the summer until sufficient certainty was reached about the launch of the Functional Review as a key new activity under Bank executed component 1.1. Now that the reallocation of funds to enable the Functional Review has been agreed among donors and an amendment to the Administration Agreement is anticipated to be signed soon by the

European Commission, the revision of the Program Framework can now proceed and will be carried out incorporating the Functional Review.

19. **The team continues to work on upgrading the MDTF-JSS Website.** The website is an important tool for outreach and promotion as well as for information sharing about the MDTF-JSS. Donors expressed their dissatisfaction with the existing design of the website. The team prepared TOR against which the consultant will redesign the MDTF-JSS web site (<http://serbiamdtfjss.org>) and deliver a training program for both MDTF Team and MOJPA designated staff. It is envisaged that MOJPA will play more active role in website management and that, by the end of the project, the website will be fully managed by them. During this mission the team interviewed the consultants shortlisted for this work. The selection of consultants will be completed by mid-October. It will take 30 days after the contract is signed to complete work on overhauling of the web site and migration of the content to the new location. The team expects that the new website will be ready before the end of 2013.

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

20. **Progress toward the Project Development Objectives is satisfactory.** The objective of the Trust Fund is to provide support for strengthening and advancing the justice sector reform in the Republic of Serbia in order to facilitate its integration to the EU. The implementation of Bank-executed activities remains on track, 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). After the initially slow start caused by the elections in May 2012 and subsequent personnel changes in the MOJPA, the implementation of Recipient-executed activities has picked up in 2013. The recent 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. Selakovic	Nikola	Minister, MOJPA
Mr. Backović	Čedomir	Assistant Minister, MOJPA
Ms. Kršikapa	Majda	Administrative Office, High Court Council
Ms. Pavlovic	Mira	High Court Council
Mr. Stamenković	Branko	International Affairs and Legal Assistance Department - Adjoined Deputy, Republic Public Prosecutor's Office
Ms. Krejović	Ljiljana	Procurement Specialist: PIU - MDTF JSS
Ms. Grubic	Daliborka	Financial Specialist PIU – MDTF-JSS
Ms. Janićijević	Gordana	Deputy Republic Public Prosecutor

**International Community**

Mr. Kern	Martin	Head of Operations, European Union Delegation
Ms. San Jose	Yolanda	Head of Operations I, European Union Delegation
Ms. Vandeputte	Bianca	Program Manager, European Union Delegation
Mr. Svenungsson	Torgny	Counsellor, Country Manager, Development Cooperation Division, Embassy of Sweden
Ms. Nešović	Svetlana	Program Officer, Development Cooperation Division, Embassy of Sweden
Mr. Vasilev	Petar	National Programme Officer, Swiss Cooperation Office
Ms. Crnogorac	Zvezdana	British Embassy
Ms. Noor	Mina	Embassy of the Kingdom of the Netherlands
Mr. Thunedborg	Søren	First Secretary, Royal Danish Embassy, Belgrade
Mr. Putiari	Hormuz	Royal Danish Embassy, Belgrade
Mr. Gjengsto	Halvor	International Management Group IMG, Norway

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

Mr. Popović	Aleksandar	MEGA
Mr. Jovanovic	Marko	MEGA
Mr. Antonijevic	Milan	Lawyers Committee for Human Rights (YUCOM)
Ms. Logar	Svetlana	Ipsos Strategic Marketing
Prof. Krstic	Ivana	Faculty of Law, University of Belgrade
Mr Hrle	Vladimir	Serbian Representative to the European Criminal Bar Association

**World Bank Team**

Mr. Verheijen	Tony	Country Manager
Mr. Decker	Klaus	Senior Public Sector Specialist (TTL)

Mr. Svirčev	Srdjan	Public Sector Specialist, Program Coordinator
Mr. Kisunko	Gregory	Senior Public Sector Specialist
Ms. Harley	Georgia	Public Sector Specialist
Mr. Furnari	John	Consultant
Ms. Vuković Tasić	Hermina	Program Assistant

## **Menu of Options to Support Sustainability and Transition of the RFU to Long-Term Capacity Building of MOJPA**

The list below is based on Bank experience. It is not exhaustive and if you need more options we could try to provide a more comprehensive list. We'd suggest devising a package based on several of the elements below.

### **Financing:**

- 1- Ministry pays a proportion of the staff;
- 2- Ministry co-pays all of the staff;
- 3- Ministry provides public service benefits of staff;
- 4- Ministry progressively lowers the rates of consultants to align with future expectations of civil service.

### **In-kind contributions:**

- 5- Ministry hires a proportion of the staff on contracts (in Serbia's case, we hear that one type is called a 'service contract' but you may be aware of others);
- 6- Ministry re-allocates staff within the Ministry;
- 7- Ministry attracts seconded staff from related justice agencies to work on specific aspects related to their agency;
- 8- Ministry attracts seconded staff from premier NGOs/CSOs to work on specific aspects related to their function (in Serbia's case, access to justice or mediation may be examples);
- 9- Ministry identifies a (small) proportion of junior roles and attracts final-year interns from the premier law faculty to fulfill these roles (in the RFU's case, some initial research tasks may be suitable for a position or two);
- 10- Ministry identifies a (small) proportion of administrative roles and attracts an administrative officer to fulfill these roles (in the RFU's case, organizing retreats, workshops and other administrative tasks may be suitable for a position or two).

### **Work Planning:**

- 11- Ministry undertakes to fill positions that remain vacant on their Staff Establishment List or equivalent;
- 12- Ministry undertakes to submit a budget proposal for additional financial and human resources for the next financial year (in Serbia's case, the importance of the accession process may be sufficient to form an exception to the wage freeze, and we could help you to discuss with MoF if need be);
- 13- Ministry requires consultants to dedicate a high proportion of their time to training existing civil service staff;
- 14- Ministry co-locates consultants with civil service staff for 'twinning' and daily on-the-job training.

**Date: Thursday, October 3, 2013**

**Time: 10:30-13:00 hrs**

**Venue: The World Bank Office, Belgrade**

**The meeting was attended by:**

**Ministry of Justice:** Assistant Minister Mr. Čedomir Backović, Ms. Ljiljana Krejović (MDTF-JSS Project Implementation Unit) and Ms. Daliborka Grubić (MDTF-JSS Project Implementation Unit)

**Donors:** Ms. Svetlana Nešović (Embassy of Sweden), Ms. Zvezdana Crnogorac (British Embassy), Mr. Søren Thunedborg (Royal Danish Embassy, Belgrade), Mr. Hormuz Putiari (Royal Danish Embassy, Belgrade), Mr. Petar Vasilev (SDC), Mr. Halvor Gjengsto (IMG, representative of Norway), Ms. Mina Noor (Embassy of the Kingdom of the Netherlands), Ms. Bianca Vandeputte (EU Delegation), Ms. Yolanda San Hose (EU Delegation)

**World Bank:** Mr. Klaus Decker (Senior Public Sector Specialist and Task Team Leader), Mr. Srdjan Svirčev, (Public Sector Specialist and Coordinator for the MDTF-JSS), Georgia Harley (Public Sector Specialist), Gregory Kisunko (Senior Public Sector Specialist) and Ms. Hermina Vukovic Tasic (Program Assistant).

The meeting was chaired by Mr. Klaus Decker, Senior Public Sector Specialist and Task Team Leader, the World Bank.

The agenda for the meeting was:

- MDTF-JSS Team - Welcoming remarks
- Justice Reform Strategy 2013-2018 – Status update
- MOJPA priorities in line with EU accession process
- Free Legal Aid
- MDTF-JSS activities – update
- Discussion on Functional Review
- Reform Facilitation Unit
- Any Other Business

#### **MDTF-JSS Team - Welcoming remarks**

Mr. Klaus Decker, TTL, who joined the team early this year, said he would like to take a fresh approach to the MDTF generally and to the MC meeting particularly. Having spoken with each of you, he would like to change the dynamics of MC meetings, to move from one-way communication, to give more opportunities to discuss substantive issues, make suggestions, and discuss options and decision points.

Mr. Srdjan Svircev updated the MC members on the current TF budget which is calculated in USD although the contributions from donors are received in all currencies. At present the TF has 8.7 mil USD, while 1,3 mil USD, final contribution by EU, is yet to be received. Mr. Svircev confirmed that the amount of 1,3 mil USD is equivalent to 1 mil EUR. With this final EU contribution the TF will have the budget of 10 mil USD. Total disbursed amount is 4,3 mil USD, which is approximately 1 mil USD per year. The TF has enough funds to cover all activities.

### **Justice Reform Strategy 2013-2018 – Status update**

Mr. Cedomir Backovic informed the group on EU Accession related priorities. The National Strategy for 201-2018 was adopted in May 2013, and in June the detailed Action Plan. Committee for the implementation of the Strategy is formed, Secretary and Chairman (Cedomir Backovic) appointed. Mr. Backovic thinks that the action plan is workable, reasonably designed, has achievable goals. Set of four Laws will be adopted by the 25<sup>th</sup> of October. Criminal procedure Code has come into force on October 1, 2013.

### **MOJPA priorities in line with EU accession process**

In regard to EU accession process, Mr. Backovic said that chapter 23 is dealing with the same issues that are under reforms: judiciary, anticorruption and human rights and he think that MoJPA will be able to manage to meet conditions for starting negotiations during 2014. The EU accession plan will be based on existing Action Plan for reforms. As of June 2014, priorities will be court network, reallocation of resources and equipment. Efficiency is major priority, length of proceedings and anticorruption.

### **Free Legal Aid**

Ms. Georgia Harley said that MDTF continues to provide advice and support to the Working Group on options to establish a FLA system. The Chair of the working group held a 3-day retreat last weekend to focus minds on finalizing the draft. Mr. Backovic said that the enactment of the FLA Law is planned by December 2013, but will come into force by Jan 2015. In the meantime particularities on how the Law will be implemented will have to be clarified, trainings need to be done, and by laws to be enacted.

Key development is inter-agency cooperation between MOJPA and MoLSP, primary legal aid may be provided together with the Ministry of Labor and Social Policy, but still by lawyers which is important. Eligibility for indigence will be based on social welfare database from MoLSP.

The MDTF is also supporting the process by providing a fiscal impact analysis, as it's clear that this Law will have fiscal impacts, and to encourage an evidence based approach to policymaking. The Fiscal Impact Analysis (FIA) will identify the financial implications of different options being considered by the working group, to the extent that these have been particularized. It will also include a cross-country analysis of costing in five locations. The FIA team has presented the methodology and preliminary results to the working group and gathered data from them. Next steps are to complete the data collection and circulate a first draft by early November and to finalize the draft by late November.

Mr. Backovic confirmed that he intends to use this analysis to find solutions to options which remain open and develop an implementable law.

The WB team stated that the budget allocated by the MDTF to support implementation of FLA Low and other access to justice activities is 1,645 mil USD which the Bank and the MOJPA had both agreed over the summer would be sufficient for implementation of currently planned activities. This amount has been specifically set aside for activities to support the roll-out of the FLA system once the law is passed.

### **Justice in Serbia Survey – status update**

The MDTF-JSS is conducting a follow-up survey to the Perceptions of Justice survey organized in 2010. This activity will feed directly in the Functional Review. After the first round of consultations and received inputs from MOJPA, HJC and SPC the team is hosting a final mini retreat today in the hope of receiving any final comments and getting the ‘green light’ agreement from all parties on the final questionnaires. Once approved by all, the survey team will be able us to start with the field work. Local company, IPSOS, has been selected to collect data and prepare preliminary analysis. The field work is set to start by the end of October and first preliminary results will be available in February/March 2014.

Within this activity IPSOS will also prepare two or three maps of court procedures from the perspective of the court user. Donors are asked to provide their input to this activity and to propose judicial processes that are worthy of mapping to inform future reform efforts. Ms Harley agreed to outline the mapping process in writing and the meeting agreed to provide suggestions. Mr. Thunedborg pointed to the insufficient capacities of Serbian judiciary to combat extremists groups and hooligans and proposed to have this included in the mapping activity.

### **Reform Facilitation Unit – status update**

At the request of AM Backovic discussion on the RFU was moved up on the agenda.

Mr. Backovic presented his suggestion on how to reorganize the RFU in light of the MOJPA’s priorities in line with EU accession process. RFU was created in 2011 under the recipient-executed part of the TF in order to provide MoJ with expertise related judicial reform and EU accession process. Existing ToRs cover both topics (reform and accession) but the name of the Unit did not emphasize the accession part. Under the present arrangement there is little difference between RFU consultants and public servants at the MoJ. Mr. Backovic emphasized technical assistance provided by RFU consultants in the process of preparation of new National Judicial Reform Strategy. According to Mr. Backovic this is the way how consultants in the RFU should perform. Under the current arrangement between MOJPA and MDTF, RFU is set to expire on Dec 31, 2013. However Mr. Backovic emphasized MOJPA’s need for such assistance provided by RFU and proposes re-shape RFU in a way that it will support MOJPA in the challenges they are facing today. Mr. Backovic also reflected on his, as well as MOJPA’s, preference for local (national) consultants since they understand Serbian context better than foreign consultants who might be experts but they lack the knowledge of local laws and circumstances.

Based on the plan for reshaping of RFU, future RFU consultants will have to be sufficiently educated and with proven experience in dealing with Acquis. Their work will be focused on analyzing Acquis, summarizing it, making it accessible to others and on cross-comparison of Acquis with Serbian laws and implementation. RFU consultants will be hired on an hourly basis, their performance would be monitored and based on deliverables. Mr. Backovic proposes to start with two years contracts, until the end of MDTF.

Ms. Vandeputte, representative of EU Delegation in Serbia, said that EU in principal supports the proposed plan. However she raised some of the concerns related to the performance of the current RFU: the work of the RFU consultants is not visible enough and they would like to see that new RFU will address this issue. Also, support from new RFU has to be based on actual needs, has to be result orientated and, most important, it has to be sustainable in the long run. Ms. Vandeputte highlighted that these concerns should be taken seriously by MOJPA and they represent conditionality for future support to RFU. EU insists on transparent recruitment process where the donors will be able to comments on the proposed TORs which will enable them to monitor consultants performance. Ms. Vandeputte suggested that initial contracts should not be for a period longer than one year with possibility for extension based on consultants' performance. The contracts should also include a clause that if delivery and outputs from this consultancy is not sufficient the contract could be terminated. EU believes that future RFU should work beyond the team, beyond MOJ and reach out to link with others, rather than working on their own. In that sense, it is important to build the capacity of all the involved institutions and specially public servants already employed by the MOJPA. Mr. Backovic confirmed that MOJPA's plan for restructuring of RFU will incorporate all EU comments and concerns. He understands the importance of the issue of sustainability as well as issues of transparency and performance monitoring. All of this will be addressed in the MOJPA's proposal.

Ms. Noor agreed that the MOJPA clearly needed the capacity but said that sustainability remains the most important factor. She suggested that part of the consultants work should be mentoring public servants at MOJPA. This will ensure not only transfer of knowledge and expertise but will also ensure that expertise is not lost once the consultants leave ministry. This would require structured relationships of mentoring staff, and agreement that certain time is dedicated to mentoring the staff in the MOJ.

Ms. Nesovic emphasized that the future RFU has to be checked against the Paris Agenda for Aid Effectiveness. According to the Paris Agenda on Aid Effectiveness such implementation units within the existing national mechanisms should not be supported. Ms. Nesovic said that this type of assistance creates parallel structures, which cannot be sustainable. Ms. Nesovic said that it is important to clarify and connect TORs of future RFU consultants with MDTF-JSS project development objective and to the activities within the MDTF-JSS. It is also necessary to provide sufficient explanation on MOJPA's plans for ensuring sustainability of this unit within the existing public administration. Ms. Nesovic also said that SIDA received requests for this type of support from other ministries which shows general lack of expertise in government as a whole.

Ms. Crnogorac said that Embassy of UK in principal supports this transformation of the RFU.

Mr. Gjengsto stated that he personally supports the idea but he will need to consult with HQ in future steps.

Mr. Decker noted that the Bank has fiduciary responsibilities to utilize funds from MDTF for development purposes. The proposal for restructuring of the RFU will require approval by the Bank's management. He quoted from the Mid Term Review of the MDTF-JSS that:

*“...Long-term capacity building of MoJ staff needs to be a top priority. While the RFU can help fill the existing technical gap within the MoJ, the ultimate challenge is to build a critical mass of qualified civil servants within the MoJ. Budgetary restrictions, as well as the lack of a comprehensive HR strategy, are challenges to be addressed.”*

Mr. Decker provided background information about the creation of the RFU. RFU was originally created in 2010 as a short-term capacity filling arrangement between the Bank (as a manager of the TF who is representing donors contributing to the TF) and Ministry of Justice. In order to contribute to sustainability in some way the RFU was funded on an 80/20% co-financing arrangement, but a year ago at the request of the government this shifted to 100% MDTF funding. It currently has 8 staff and current arrangement will expire on December 31, 2013. Mr. Decker noted that the RFU was useful at the time and clearly capacity was needed, it would be handy to have it for the future, particularly in light of accession. However this time we have to think what mechanisms can be put in place to build capacity in a sustainable manner so we do not have same discussion again in a 2 year time. The decision to continue capacity filling, to increase number of consultants to 12 and maintain 100% financing is a strategic one for all donors participating in the Trust Fund. Mr. Decker made reference to the fact that it is almost impossible for the Bank team to supervise/monitor work of the RFU consultants based at the Ministry under a recipient-executed component of the trust fund. He proposed that if the donors agree to restructure this unit, the RFU should report back to the donors and present results at MC meetings.

Mr. Vasilev stated that SDC in-principle supports the restructuring, but he would need to consult with HQ. Mr. Vasilev said that they would need to comment on the proposed sustainability plan and on a concrete proposal on how the transition will take place so that at the end of the 2 years RFU expertise and knowledge is transferred to MOJPA.

Mr. Backovic noted that the same level of scrutiny should be applied to this decision as to others. Ms. Vandeputte assured Mr. Backovic that the EU will apply a high level of scrutiny to all activities.

**Conclusion:** Donors agreed in principle, next step is for the MOJPA to submit a written proposal to be considered and approved by the donors and Bank management. The proposal would outline the tasks, structure, expected outputs and deliverables and will have to substantiate how the sustainability issues will be addressed. The proposal would have to be specific on how the positions of the consultants would be transitioned into permanent staff at MOJPA. MOJPA would circulate the proposal for comment and approval by the MC meeting. It has been agreed that there is no need for a separate meeting.

### **Review of the Criminal Chain Processes (RCCP)**

The Bank team is monitoring this consultancy very closely. Initial plan to finalize this analysis by the end of the year had to be revised because of the lack of selected consultants to deliver against agreed project description and TOR. The Bank team provided notice to terminate this contract. As a result team leader was terminated and following discussion with consultants they have agreed to re-do the field work at no cost to the trust fund, with a new team leader and new team. They have started with field work and data gathering. However, the field teams are experiencing difficulties with arranging meetings with institutions at the selected locations, and it seems that additional approvals will be required to conduct case file reviews than was originally required. The Bank is looking to work with the HJC, SPC and Ministry of Interior to overcome this delay.

The RCCP analysis is an example of the struggle of dealing with low capacity and high maintenance local companies which require significant efforts on the Bank side to monitor and supervise.

### **Functional Review**

Mr. Decker explained in details Functional Review Handout prepared for this meeting. The team is looking for input and comments from donors, particularly comments related to the substance of the Functional Review. The proposed handout is a starting point and it will be revised as we go. Mr. Decker asked donors to provide their comments by the Friday, October 11.

Mr. Decker alluded to the issue of “moving targets” in the Functional Review. The MOJPA is rearranging court and prosecutorial network and we need clarity from both EU Commission and MOJPA on what is the scope of this exercise. The Bank team plans to organize by the end of October a meeting with representatives from EU Commission and Serbian Judicial Authorities where we will get full clarity on the scope of the Functional Review. Since both EU Commission and Serbian authorities plan to use this analysis as a tool to inform the negotiation process it needs to be most relevant and to cover in detail on what both parties need.

Based on some other analytical work done by the WB and EU, Mr. Decker explained that Functional Review has to be kept in lay terms. This is part of the broader communication strategy to speak simply so that Functional Review can be understood by larger group of people, not only EU, WB and MOJPA.

Mr. Decker informed participants that we are not waiting but we already started with Functional Review. The follow-up to the Justice in Serbia Survey from 2010 is just first in the line of many activities which Bank team will initiate in the incoming period.

To enhance communication between EU, Serbian judicial authorities and Bank team we will recruit a representative of the Functional Review team who will be available all the time to channel communication. It has been agreed with MOJPA, HJC and SPC that each institution will appoint a focal point for Functional Review. The Focal Point will have to have sufficient access to both technical staff in their respective institutions but also to senior policy makers who will be able to assist in the Functional Review. The Bank team plans to take very proactive approach to communication; following the meeting on the scope at the end of October we plan to have an official launch of the Functional Review in Belgrade. This will be followed by number of workshops and dissemination events where the team will test some of the findings from the Functional Review with scholars, academia, judicial professional, CSOs, journalists and other interested in Serbian justice sector.

The meeting agreed to provide comments on the Functional Review Handout by Friday 11 October 2013.

Due to the lack of quorum the meeting was closed at 13.00 hrs.

## *Serbia Judicial Functional Review – Discussion Handout*

### Component 1: Performance Baseline Data

*NB:* The below listed activities will overlap and run in parallel to some extent. Data collection and generation efforts, for example, will not wait for the justice system performance framework to be finalized.

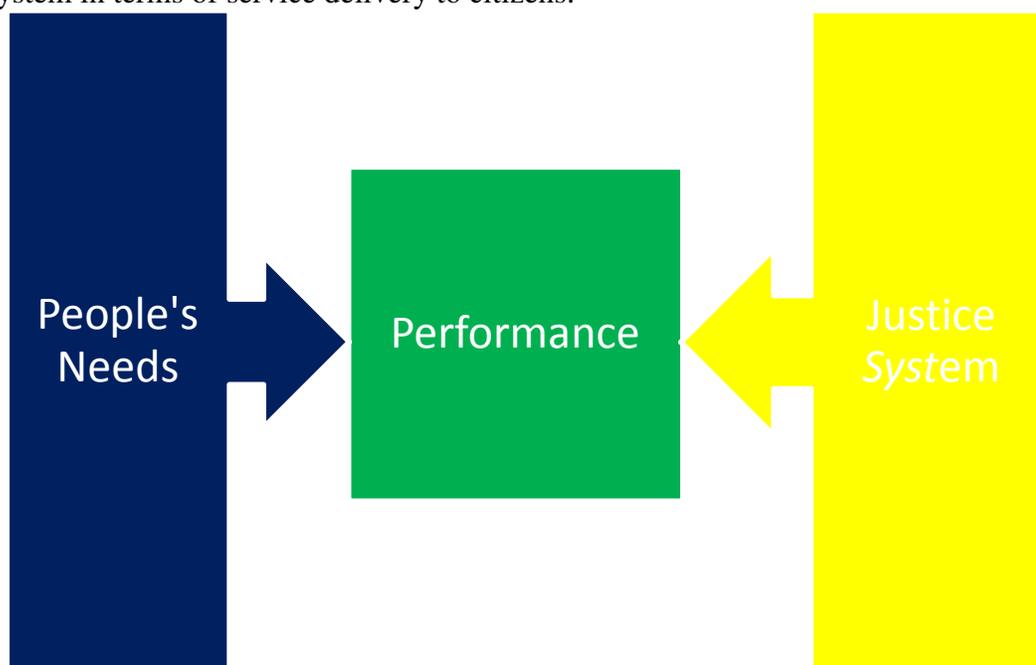
(1) Establishing a justice system performance framework

Workshop: Representatives of Serbian institutions (political level), European Commission (Brussels and EC Delegation), World Bank team

When and where: As soon as possible. Belgrade? October 25<sup>th</sup>?

Required input: Discussion draft to be provided by World Bank team, with initial input from EC and MOJPA.

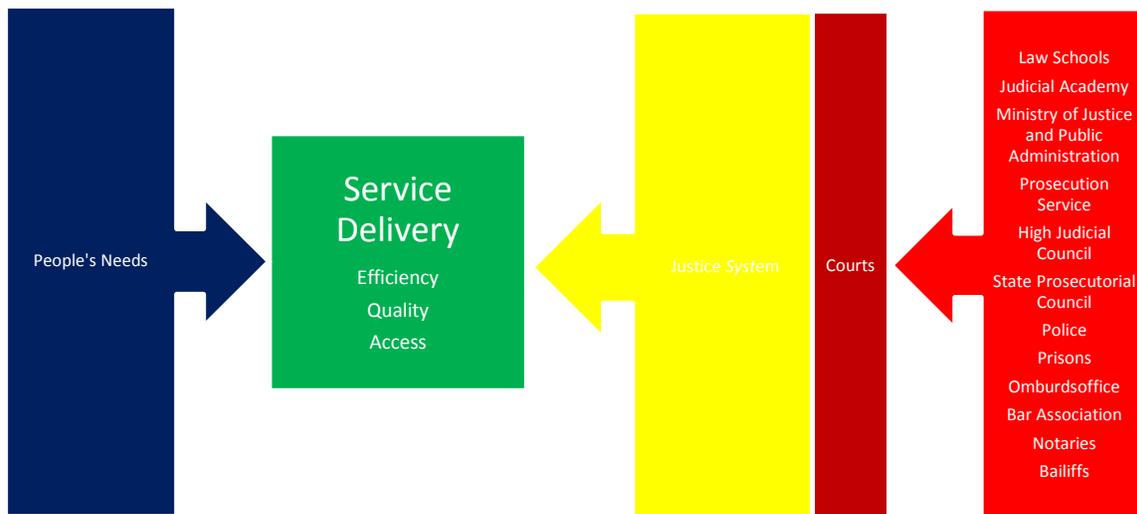
Scope: The Serbian authorities and the European Commission need to agree on the exact scope of the exercise and the institutions to be covered. The focus will be on actual implementation rather than on the law on the books. The entry point will therefore be the performance of the justice system in terms of service delivery to citizens.



Facilitated by the World Bank, the Serbian authorities and the European Commission will agree on the structure of the baseline in a way that all relevant performance aspects are covered so that it can capture all relevant data that will be collected or generated throughout the process. Anticipated performance measurement areas are: (1) efficiency of service delivery (e.g. outputs per resources, timeliness), (2) quality of services delivered (e.g. fairness, impartiality, consistency, integrity), and (3) access to services (e.g. physical, geographic, financial).



The scope will focus on service delivery by the courts. It will include the aspects of the functioning of related institutions that contribute to or are an obstacle for service delivery by the courts in terms of efficiency, quality and access. These institutions may comprise: The Ministry Justice and Public Administration, High Judicial Council, State Prosecutorial Council, courts, prosecutor offices, the Judicial Academy, Ombudsoffice, the police, prisons, bar associations, other justice sector professional organizations (notaries, bailiffs, etc.), and law schools. However, the analysis will not provide entire functional reviews of these institutions *per se*.



(2) Data collection

Relevant electronically and manually collected judicial statistics will be obtained from the Statistical Office and all relevant institutions that are part of the analysis. The Ministry of Finance and the Ministry of the Interior will also be approached to provide relevant data. Additional case-processing related statistical data may be available through the case-management system. Moreover, 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 World Bank team will also collect data generated by previous and ongoing justice sector analyses. An initial desk review will be carried out for this purpose.

The World Bank team will screen the case management system and other potential electronic sources of relevant performance data.

Question: What other relevant data sources are there?

### (3) Data generation

Data generation for those performance aspects and indicators not sufficiently covered by currently existing data, recognizing that these activities will occur concurrently – i.e. data generation and data collection will to some extent take place at the same time.

The follow-up survey to the 2010 survey is already under preparation. Additional data generation efforts will comprise: mapping of specific procedures, case-file analysis, and a justice needs assessment.

Questions: Which procedures and locations should the mapping exercise focus on? Are there any additional options for data generation?

### (4) Cross-country data

Based on the Framework, its measurement areas and indicators agreed upon between the Serbian authorities and the European Commission, performance data from other countries with systems comparable to the Serbian one will be collected by the World Bank team.

Question: Which countries should the team primarily look at? Options: Croatia, Slovenia, others as needed? What about Bulgaria and Romania?

## *Component 2: Performance Assessment*

### *Sub-component 1: Service delivery performance*

(1) Desk review of existing analytical work related to justice sector performance and related challenges.

The World Bank team will carry out a desk review to take stock of performance challenges identified by previous analytical work.

#### Tentative list:

FR supported by SIDA for the MoJPA - WB 2010 perception survey,

MDTF supported ICT strategy for the justice sector

MDTF JPEIR

Indicators for the justice sector (developed within the framework of MDTF - now focused/being integrated into the NJRS)

USAID project report/analysis on the court efficiency, backlog reduction, facility management in misdemeanor courts

EU progress reports

OSCE reports

GIZ analysis of the legislation drafting process  
Sector assessment for rule of law which is ongoing (IPA financed)  
Justice experts under the PPF 5 support for the future programming of IPA 2014-2020 (including the development of the NAD and indicators)  
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  
Related IPA 2012 and 2013 projects  
ECtHR judgments on article 6 ECHR and related recommendations  
CEPEJ cross-country reports and data (including 2012)  
ABA-CEELI reports  
National Judicial Reform Strategy  
Supreme Court of Cassation Annual Reports  
Free Legal Aid Law Fiscal Impact Analysis

Question: Anything missing?

#### (2) Stakeholder and Institutional Analysis

Informed by the political economy of the justice sector and the work above, this would assess how the institutional arrangements affect service delivery and how stakeholder behavior impacts service delivery.

#### (3) Performance hypotheses

Based on the desk review and initial data analysis, preliminary conclusions about dysfunctions can be developed and checked for accuracy and relevance based on the available data and supporting information. Hypotheses can be confirmed, refined, changed, or rejected. This will be an iterative process throughout the analysis. Whenever possible, performance will be assessed against European standards.

#### (4) Cross-country comparison

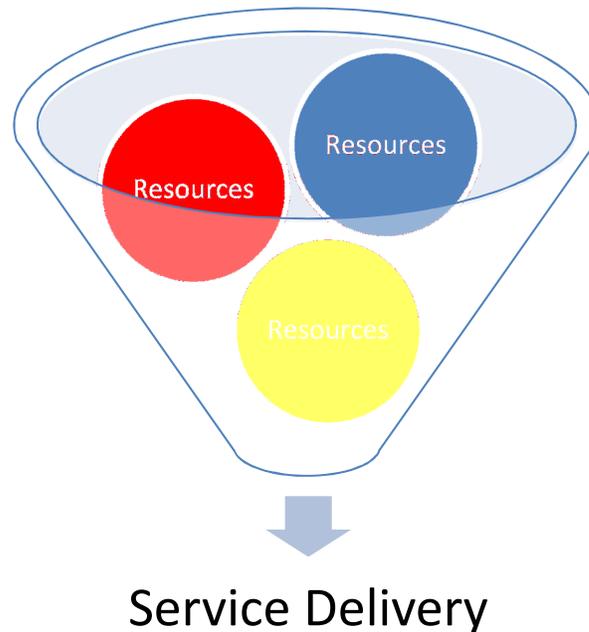
Based on the performance hypotheses, the World Bank team will carry out quantitative and qualitative analysis of the available data from Serbia and put them into the context of performance in comparator countries. Focus will be as much as possible on hard data. Active knowledge exchanges with new EU members on their experience with the accession process.

### *Sub-component 2: Resources and performance*

Four analyses of how different types of resources are used for service delivery and one specific analysis looking at resource allocation to ensure service delivery across the territory:

- Financial resource analysis (linking resource allocation to focus them on performance, budget formulation, execution, reporting, court fee analysis)
- Human resource analysis (recruitment, initial training, on job training, career paths, evaluation and promotion, retaining staff, gender balance, disciplinary actions, firing, geographic mobility, HR planning)
- ICT analysis (ICT as it affects service delivery, system architecture, how to best use existing systems, inter-operability, HR in ICT, process analysis)

- Infrastructure analysis (link to service delivery, infrastructure planning and facility management, infrastructure capacity, functionality of space as a service delivery constraint).
- Analysis of the judicial map for resource allocation across the country (identify performance and resource discrepancies between urban and rural areas etc.)



Options: Once the analytical input is available, the World Bank team will develop short, mid and long term options to address the performance challenges identified, focusing on identifying resource gaps and ways to use available resources for better justice system performance. Throughout the analysis and the development of these options, the team will consult with relevant stakeholders.

### *Component 3: Risk Management Framework*

Once the analytical input is available, the World Bank team will identify risks affecting the performance of the system and develop risk mitigation options.

#### **Communication as a cross-cutting issue**

Those institutions covered by the Functional Review should appoint a contact person for the World Bank team to address its requests and can channel them to the technical people. The contact person should be of sufficiently high level to have some leverage to obtain feedback from within the organization and will need strong support from the institution's leadership for this assignment in case parts of the institution do not sufficiently communicate.

A dedicated World Bank team point person will be appointed in Belgrade to channel communication between the team and the authorities and *vice versa*.

Consultations will be carried out with all the institutions comprised in the scope as well as with relevant institutions representing the user side (civil society organizations, chambers of commerce, legal aid providers etc.).

Workshops / Retreats to ensure everybody is on board at all times

Feedback competition for ideas: Organize competition for suggestions to improve the performance of the system.

Photo competition: “Your best picture about the Serbian justice system?” Handing out cameras to law students?

External communication: Media and journalists covering the accession process, parliamentarians?

Transparent communication and sharing: Data and draft analyses will be available to all institutions involved at all times (e.g. Google docs, privileged access to stakeholders, but not with option to delete or change).

## Risks

Moving target, the system keeps changing with new courts being opened. This will make it challenging to provide a stable picture and analysis. Mitigation: data-based projections, be specific about what is moving, make this part of the workshop discussions (high likelihood and high impact risk)

Range of scope risk: Functional Review will need to cover what is needed for accession negotiations or will be irrelevant. Mitigation: early agreement between EC and Serbian authorities

Parallel analytical work needs to be considered and coordinated as much as possible.

Reluctance to share data (low likelihood, but high impact risk): Mitigation: steering committee

Elections (likelihood? Impact?)

Change in leadership at MoJPA and loss of interest

Ambitious timeline

Reluctance to disseminate the findings, if they look bad. Mitigation: Launch event with media.

Analysis not owned by institutions. Mitigation: communication, communication, communication – clear messages, short documents, face-to-face rather than written communication

**Other**

Question: Any other suggestions on activities or process?