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**MONITORING AND EVALUATION REPORT ON AID EFFECTIVENESS IN
THE JUSTICE SECTOR IN BOSNIA AND HERZEGOVINA**

Sarajevo, April 2010.

INITIATIVE BACKGROUND

This report aims to assess current aid effectiveness in the justice sector of Bosnia and Herzegovina (BiH).

The State Ministry of Justice (MoJ) seeks to promote donor coordination in the BiH justice sector through the activities of the Sector for Strategic Planning, Aid Coordination and European Integration (SSPACEI). SSPACEI was established in June 2006 and a donor coordinator was appointed in late 2006. This report on aid effectiveness in the BiH justice sector is part of SSPACEI's work plan.

Findings of the report will be useful in the development of SSPACEI's work plan in the area of donor coordination for 2010 and 2011, with the aim to improve the effectiveness of aid delivered in the BiH Justice sector.

THE IMPORTANCE OF IMPROVING AID EFFECTIVENESS IN THE BiH JUSTICE SECTOR

The BiH justice sector relies heavily on donor aid to finance its development and future activities in the sector will require donor assistance. It is therefore important that the aid provided to the BiH justice sector is as effective as possible.

The need for aid effectiveness in the BiH justice sector is intensified by several features including:

- The large number of BiH justice sector institutions to whom donor funds flow;
- Lack of coordination between BiH justice sector institutions;
- A large number of donors operating in the sector;
- High funding requirements for the sector;
- Implementation of the BiH Justice Sector Reform Strategy (JSRS); and
- Reductions in donor funds available to BiH justice sector as donors realign funding priorities to other countries.

Analysis of the justice sector in relation to the Budget Framework Paper of state-level institutions in BiH, indicates that there are a number of issues underpinning the demand for additional resources in BiH justice sector, and particularly the need to provide sufficient replacement funding for projects and development activities previously funded by donors. For example, the gradual shift from international funding to the Budget of BiH state level institutions and international obligations for the Court of BiH, the Prosecutor's Office of BiH and the Registry Office will result in an additional annual funding requirement of over 14 million BAM by 2010. The funding requirement for the High Judicial and Prosecutorial Council of Bosnia and Herzegovina (HJPC), to replace international funding of its operations, will result in an additional annual funding requirement of 3 million BAM by 2010. At the same time, BiH justice sector will need to commit resources to the implementation of the JSRS, which contains 69 strategic programmes that have been identified as the basis for justice sector reform. Financial plan for the implementation of JSRS shows that full implementation of the Strategy will require more funding than is available either through existing donor pledges or through available government resources.

Having in mind scarce budgetary resources on one hand and an ambitious reform agenda set out in the JSRS on the other, considerable further donor assistance in BiH justice sector is obvious. Funds made available need to be used in the most effective way.

Successful implementation of the JSRS also requires the coordination and alignment of donor assistance with the sector strategy, an approach advocated by the Paris Declaration on Aid Effectiveness (Paris Declaration), which was recently signed by BiH.

ASSESSMENT METHODOLOGY

Evaluation of aid effectiveness in the BiH justice sector has been based upon the principles of the Paris Declaration. It focuses on improving aid effectiveness as well to supporting partner country efforts to strengthen governance and improve development performance. Through the Paris Declaration, donors and recipient countries have also committed to monitoring and measuring their progress in improving aid effectiveness against 12 specific indicators.

These 12 indicators of aid effectiveness, from Paris Declaration, are broken into five sub-categories: ownership; harmonisation; alignment; managing for results and mutual accountability.

Paris Declaration indicators can be used for assessment of aid effectiveness in the BiH justice sector, having in mind that:

- The Paris Declaration sets a widely accepted framework for the evaluation of aid effectiveness;
- The majority of donors operating in the BiH justice sector are signatories to the Paris Declaration;
- The indicators for aid effectiveness identified in the Paris Declaration are as applicable to Bosnia and Herzegovina as they are to other countries;
- The BiH justice sector will continue to heavily rely on donor assistance in the future; and
- Donors and justice sector institutions in BiH should aspire to effective aid regardless of whether or not they have signed the Paris Declaration.

The 12 indicators provided by the Paris Declaration to monitor the progress of aid effectiveness have been slightly modified for the needs of this assessment. Namely, 12 Paris Declaration indicators are designed to measure progress of Paris Declaration implementation at the country level and as a result some indicators for this assessment have been reinterpreted to be applicable to BiH justice sector. Nevertheless, it is important to mention that in cascading the indicators from country to sector level, the intent that lies behind each indicator has not been changed.

For each of the 12 indicators of aid effectiveness, this report on aid effectiveness in the BiH justice sector identifies both an overall rating of progress (low, moderate or high) and provides examples of the evidence from which each rating was made.

INDICATOR 1: „OWNERSHIP“ **PROGRESS LEVEL: „MODERATE“**

Ownership is crucial to aid effectiveness and good development results, and has a central place in the Paris Declaration. For the purpose of this evaluation, ownership should be viewed in terms of the BiH justice sector ability to exercise effective leadership over its development strategies and policies.

Indicator 1 provides an entry point to the issue of ownership, focusing in particular on whether a sector has a medium-term strategy with which donors can align their development assistance and the degree to which BiH justice sector institutions engage proactively with donors to identify funding needs.

Based on the evidence below, the current level of progress in relation to Indicator 1 is rated as moderate.

EVIDENCE:

1) *BiH JSRS*

The JSRS was adopted in mid 2008. It presents a vision for the justice sector in BiH, which was prepared jointly by the key institutions of justice sector in BiH, and it contains complete and realistic strategic programs with associated activities. What's more, one of the pillars of the JSRS in BiH includes subarea of aid coordination as a key link between the priorities that are determined by the control mechanism of the Ministerial Conference. The Entity, Cantonal Ministries of Justice and the Judicial Commission of Brcko District of Bosnia and Herzegovina (JC BD) will strengthen its capacity by developing mid-term strategic documents in 2010. By that building of ownership moves upward, and donors will be able to match its future funding with the funding priorities identified in the JSRS and harmonized in the institutional strategic plans.

2) *Consensus of BiH justice sector institutions*

The implementation of the JSRS in BiH, led by domestic institutions, reflects the complex governance arrangements within the justice sector in BiH. Implementation of the JSRS involves extensive consultations with donors and key stakeholders in BiH justice sector strategic processes. Consensus was achieved among key institutions in BiH justice sector about mechanisms of implementation and necessity to establish joint donor fund for implementation of BiH JSRS. As a result, high rate of national ownership of JSRS is highlighted.

3) *Alignment of JSRS with other BiH strategies*

The JSRS is fully aligned with other key strategy documents in BiH: European Partnership for BiH; Strategy for the Integration of BiH into the European Union; and the Public Administration Reform Strategy of BiH (PAR).

4) *Joint implementation of the JSRS and establishment of donor coordination units at entity and the JC BD level*

The responsibility for JSRS implementation is being entrusted to a large number of BiH justice sector institutions. Close cooperation and coordination between institutions for the implementation of the JSRS will be crucial. The overall coordination for the implementation of JSRS activities is being entrusted to MoJ BiH SSPACEI. JSRS foresees the establishment of similar units in the Entity Ministries of Justice and JC BD BiH. Once these units are established, they will provide support to SSPACEI in the overall JSRS coordination and implementation. The vast majority of justice sector institutions in BiH, particularly Entity and Cantonal MoJs and JC BD BiH, still possess fairly modest or no organisational or human resource capacities with adequate skills to efficiently handle the issue of donor coordination in the context of JSRS implementation.

5) *Establishment of the donor coordination unit within the BiH MoJ SSPACEI*

The establishment and strengthening of the BiH MoJ SSPACEI significantly contribute to the development of local ownership over aid coordination in BiH justice sector.

Key activities in SSPACEI donor coordination work plan include:

- Development and maintenance of a data base of donor funded projects in BiH justice sector;
- Development and maintenance of a data base of donor contact details;
- Holding regular donor coordination meetings;
- Establishment of a forum for donor coordination between local institutions in the justice sector;
- One on one update meetings between SSPACEI and key donors;
- Mapping of donor assistance to the key pillars identified in the JSRS; and
- JSRS Fund management.

6) Database of BiH Justice Sector Projects

A database of all projects in the justice sector has been developed. This database has been built based on information collected from: UNDP's donor database, donor work plans, and individual meetings with donors.

Developing a detailed project database has proven to be difficult because:

- Donors have not been very responsive to the SSPACEI's need for data, due to the belief that they have already provided relevant information to the UNDP donor mapping project, now located in the Sector for coordination of international economic assistance in the Ministry of Finance and Treasury of Bosnia and Herzegovina (MoFT) and wish to avoid duplication;
- The database of donor assistance, managed by MoFT, does not provide sufficient detail to be of use at the sector level. For example, in this data base the categorisation of justice sector projects is made in accordance with the Directorate for Assistance in Development (DAC) within the Organisation for Economic Cooperation and Development (OECD) code system for aid delivery, which does not reflect the responsibilities and scope of the BiH justice sector institutions or the areas defined by the JSRS. Also, this database contains very poor project descriptions making it difficult to determine what type and scope of donor assistance is provided by certain project. Therefore, the usability of the information contained in this project data base is very limited. In cooperation with the MoFT, BiH MoJ SSPACEI is working on removing of those shortcomings. It may be that at least some of them will be addressed soon. The existing justice sector database that SPACEI has developed is a good start but will need ongoing refinement to improve its accuracy.

7) Development of a database for donor contact details in justice sector

SSPACEI has developed an extensive database of donor contacts which assists SSPACEI to communicate with donors and facilitate information sharing within the justice sector. The database is updated on a regular basis in contact with focal points, to ensure its accuracy.

8) Holding of regular donor coordination meetings in BiH justice sector

SSPACEI has established regular donor coordination forum for the needs of BiH justice sector which are attended by donors operating in the sector, key local institutions and other stakeholders. These meetings are held quarterly and have been well attended. Each meeting aims to update donors on key activities in BiH justice sector, advise donors on key funding needs, and facilitate discussion between BiH justice sector stakeholders and the donor community. This initiative will help to substantially build ownership if the funding priorities raised in the forums are acknowledged by donors in the future funding decisions.

9) Building donor coordination forums with HJPC, Ministries of Justice and MoFs in BiH

BiH justice sector is highly fragmented, with many key local institutions. Effective local ownership depends upon a high degree of coordination among local stakeholders in the strategic process, so that the BiH justice sector can speak with one voice to the international community. Transparency of SSPACEI as a focal point for donor coordination has risen, though awareness of the donor coordination responsibilities of the BiH MoJ SSPACEI seems to be higher with the international community than with local institutions. As a result, SSPACEI has recently intensified its efforts to establish relations with key justice sector stakeholders at state, entity and Brcko District levels of government. SSPACEI has also recently commenced building a donor coordination network between the FBiH Ministry of Justice, the Cantonal Ministries of Justice and Federal and Cantonal Ministries of Finance.

To assist in coordination between State MoJ, Entity MoJs and cantonal MoJs, the FBiH Minister of Justice has identified a donor coordinator for the FBiH MoJ. The overall goal of building relations between justice sector institutions is not just to increase the SSPACEI's transparency, but also to establish a forum of donor coordination practitioners across all levels of the justice sector in BiH. Such a

forum, led by the BiH MoJ SSPACEI, will become an important part of the overall aid coordination, harmonisation and alignment process in the BiH justice sector. The forum will facilitate information exchange on projects, as well as performance monitoring of aid disbursements and increased accountability in that process.

Apart from MoJs, HJPC and JC BD will also need to be a member of the local justice sector forum, given its role of "safeguarding the independence" of judiciary throughout BiH. According to the Law on the HJPC of BiH, the HJPC is responsible for: "...*Initiating, overseeing and coordinating projects related to improving all aspects of the administration of courts and prosecutors' offices, including seeking national and international funding thereof;...*". These functions are performed by the Support Department within the HJPC Secretariat. BiH MoJ SSPACEI has formalized cooperation with HJPC Secretariat staff, within the mechanism of BiH JSRS implementation. However, cooperation will need to be intensified. Areas of mutual cooperation include, *inter alia*: the prioritisation of funding needs; the joint development of project documents and proposals; joint approaches for donor funding; and joint insistence from donors to align their future assistance with the priorities identified in the JSRS. Close collaboration between the State MoJ and the HJPC will require a high level of human resource capacity in both, SSPACEI and the HJPC Secretariat, which is limited at the moment. In order to achieve better cooperation, both institutions will need to heavily invest in further capacity building of their donor coordination staff.

10) Mapping donor assistance by programmes in the JSRS

A draft matrix of mapping donor assistance to the core areas and strategic programmes of the JSRS was developed. Matrix is a graphic representation of individual donors within the given area of JSRS. This matrix will need further verification, refinement and regular updating.

11) Alignment of justice sector plans and strategies

The recently introduced medium-term budgetary process, which is updated on annual basis, and which is applicable to all levels of government in BiH, aims to make a link between strategic plans and budgets. The co-existence of multiple plans and strategies in recent years has generated duplication and weakened the link between plans and resource allocation processes. Once the JSRS is approved and implemented, it will help to eliminate the risk of overlap and conflict between different strategies and plans in the sector as it acts as a high level framework that takes in all parts of BiH justice sector. Alignment of plans will be improved further when ministries and other justice sector institutions align their institutional strategic and operational plans with the JSRS. This alignment will assist BiH Governments to prioritise and make optimal decisions about the allocation of scarce budgetary resources and provide clear directions to donors on areas where their aid is most needed.

12) Limited donor coordination capacity in BiH justice sector

SSPACEI has made a step forward in overtaking the leading role in donor aid coordination at the BiH justice sector level. However, SSPACEI is still in the process of recruitment of additional staff and their training. Due to special circumstances arising from the constitutional division of responsibilities, Entity and Cantonal MoJs, as well as the JC BD are also supposed to take an active part in the donor coordination process. Unfortunately, these stakeholders currently do not possess any capacity to assume donor coordination responsibilities. Once greater capacity for donor coordination is built in key justice sector institutions, leadership and local ownership of assistance will be increased.

13) Difficulties in establishing of donor coordination in justice sector in BiH

Despite best intentions, achieving coordination of local justice sector institutions is not a simple task to undertake in multifaceted BiH justice sector system. The complexity of the constitutional structure of BiH has inevitably reflected on the structure of the justice sector, which is characterised by a large number of stakeholders in the strategic process (i.e. 13 MoJs, JC BD and HJPC), with ambiguous inter-institutional mandates and responsibilities, and quite often rival agendas and clashing interests that sometimes even result in mutual obstruction. Annex II shows the multiplicity of stakeholders in the BiH justice sector and their relationship in terms of aid coordination. A number of strategic programmes in the JSRS seek to remove the existing dysfunction of the justice system in BiH.

14) Successful examples of building local ownership within areas of the justice system

The establishment and operation of the Land Administration Reform Project (LAP) provides an example of project which builds local ownership of assistance within an area of the justice sector in BiH. In April 2003, a MoU was signed between Entity Ministries of Justice and donors (SIDA, ADA and GTZ) defining the scope of the project and setting out the roles and responsibilities of MoU signatories. A new MoU was signed in March 2006 to include Entity Geodetic Administrations and extend support to cadastre offices. Signing of the MoU also resulted in the establishment of the Land Administration Coordination and Advisory Board (LACAB) which is comprised of local institutions. Assistance under this initiative will amount in total 14.8 million Euro and will extend from 2001 to 2010, with possibility of extension. The establishment of the LACAB is a good example of donors working to increase local ownership of assistance in the justice sector in BiH.

INDICATOR 2: „ALIGNMENT: RELIABLE SYSTEMS IN THE JUSTICE SECTOR AND DONOR USE OF THIS SYSTEM “

INDICATOR 2a: „BUDGET“

INDICATOR 2b: „PUBLIC PROCUREMENT“

INDICATOR 2c: „FINANCIAL AUDIT“

PROGRESS LEVEL: „MODERATE“

This Paris Declaration indicator seeks to assess the degree, to which a recipient country applies public procurement and public financial management systems, that either:

- Adhere to broadly accepted good practices; or
- Have a reform process in place to achieve these.

In this report, this indicator seeks to assess the strength of public financial management systems in the justice sector. In this assessment the degree of alignment achieved by donors using partners' systems such as: budgeting, public procurement and financial audit systems is also considered.

The complex organisational structure of the BiH justice sector poses major challenges for the alignment of donor aid with systems established in BiH. Not surprisingly, donor usage of BiH systems is still fairly weak, because BiH public financial management (PFM) and particularly procurement and auditing systems are not yet of an adequate quality. Coordination mechanisms and procedures in recording and reporting on aid are also in the process of establishing, which makes it hard for donors to make extensive use of them.

Based on the evidence below, the current level of progress in relation to Indicator 2 is rated as moderate.

INDICATOR 2a: „BUDGET“
PROGRESS LEVEL: „LOW“

The long-term vision for BiH is to become a member of the European Union (EU) and NATO. BiH have signed The Stabilisation and Association Agreement with the EU, completing the first step towards EU accession. Consistent with its vision of EU accession, BiH is currently pursuing medium-term policies contained in a number of strategic documents, such as the EU Integration Strategy of BiH, the Public Administration Reform Strategy of BiH and JSRS of BiH, aimed at aligning its budgeting process, public procurement and auditing systems with those of the EU. To this effect, State of BiH, Entities and Brcko District are slowly progressing forward in establishing reliable PFM systems.

Further strengthening the credibility of procedures and practices related to budgets, public procurement and financial auditing, as the main tools in governing the allocation and use of development resources will help to improve the alignment of donor support in the BiH justice sector. It should be emphasized that the BiH PAR Strategy, Chapter 4.2 on Public Finance Management, and its Action Plan 1, envisages a large number of PFM improvements and sets a complex reform agenda that should have been carried out until 2009. Unfortunately, progress in this field, and generally on public administration reform plan is really small. At present there is not an adequate number of donors that have opted to use BiH PFM systems, with exception of the Enterprise Sector Recovery Fund and PAR Fund.

Another obstacle to wider donor use of BiH budget processes is the fragmentation of the present system of financing the justice sector in BiH (i.e. 14 separate budgets). More extensive use of BiH PFM systems by donors will rely upon the implementation of reforms envisaged by the BiH PAR Strategy, as well as those set out in the BiH JSRS.

EVIDENCE:

1) Uncoordinated budget calendars in BiH

Some of the main shortcomings in the budget preparation process occur because of: the uncoordinated budget calendars used by the 14 justice sector jurisdictions in BiH because sequences and timelines for key actions differ from one layer of government to the other; the uncertainty in the planning of revenues in the MTEF process; mismatches between BiH Governments' budget estimates of aid flows with those that were actually disbursed by donors in a specific sector; and the failure of governments in BiH to set the expenditure framework in due time (ex ante determination of total budget ceiling).

2) Lack of alignment between budget requests and BiH justice sector priorities

The main shortcoming of individual budget users at justice sector level in BiH in preparing their budgets, is the lack of alignment between budget requests and institutional plans and priorities (with a few exceptions for example the BiH HJPC, which has linked its budget to its institutional plan since its establishment). Despite legal requirements for project-based budgeting when preparing budget requests, budget users consider almost all initiatives as a top level priority. As a result, when the budget request reaches the competent MoFT, it is impossible for MoFT to determine which activities are actually important and should be financed, and which ones could instead be dropped, or postponed for the next year. The budget requests created by the vast majority of justice sector institutions in BiH frequently tend to ignore the need for priority setting and linking their initiatives/activities with national and/or sector strategies and policies. In this way, the level of coherence between budgets and strategic plans is relatively low.

3) *Inadequate spending plans*

Once the budget is adopted, the Ministries of Finance, respectively, request the budget beneficiaries to finalise and submit their plans on budget execution. Many institutions comply with this requirement by signifying that 1/12 of the total allocation will be spent per month. In general, not enough attention is paid to the preparation of budget users' spending plans, which results in lower quality of execution processes. Ministries of Finance, respectively, can follow the execution of the budget through the treasury system and have access to budget spending on a daily basis. They are able to monitor the difference between predicted and actual budget spending. All budget users are obliged to report to the Ministry of Finance every three months, though the level of detail provided in such reports is insufficient to enable Ministries of Finance to strengthen budgeting discipline by comparing the received feedback with actual expenditures. Accordingly, Ministries of Finance miss the opportunity to locate problems in the execution of budgets in individual justice sector institutions.

4) *Limited human resource capacity for budget preparation and execution*

The human resources and skills available to justice sector institutions to prepare and execute budgets is low, leading to budgets with insufficient analysis. Further technical improvements and capacity development in budget preparation and execution will be a significant assistance. In particular, the use of medium-term expenditure frameworks ("MTEFs") will be central in improving the linkages between policy development, priority setting and budgeting.

INDICATOR 2b: „PUBLIC PROCUREMENT“

PROGRESS LEVEL: „MODERATE“

EVIDENCE:

1) *Passing and application of the Law on Public Procurement*

BiH Law on Public Procurement was adopted in late 2004 by BiH Parliamentary Assembly, which has been conceptualized on EU procurement legislation, but is still not fully aligned. The Law provides the framework for a more effective public procurement system in BiH, in line with the EC procurement regulations and directives. Pursuant to the Law, the BiH Public Procurement Agency is being established to act as the central office for standards and procedures setting related to the public procurement process. Actual procurement is decentralised to individual institutions. Despite adoption of the Law and the establishment of the BiH Public Procurement Agency, reports of this institution, as well as the auditing reports, have identified that the newly established public procurement system still functions poorly in practice. The existing legislative framework, including the set of by-law acts, is seen as overly complicated and difficult to implement by all actors in the procurement system, both national and international. As a result, the Law has been amended several times since its adoption and will need to undergo further changes related to simplification of public procurement procedures. Many other system improvements are required including: hiring an adequate number of staff in the BiH Public Procurement Agency, as well as in individual institutions, and providing institutions with additional public procurement training in order to ensure reliability of the system. Recently the donor community in BiH has started recognising the efforts that have been made by BiH governments to improve public procurement procedures. For example, the donors participating in the Enterprise Sector Recovery Fund and the PAR Fund have agreed to use BiH Public Procurement Legislation for all their procurement activities. No equivalent examples of donor use of BiH public procurement rules are present in the justice sector. SSPACEI of MoJ of Bosnia and Herzegovina and HJPC of Bosnia and Herzegovina work together with donors, on establishing of the JSRS Fund, which will be based on PAR Fund principles and follow the example of BiH Public Procurement Law application.

INDICATOR 2c: „ FINANCIAL AUDIT“
PROGRESS LEVEL: „MODERATE“

Despite the fact that external and internal financial audit systems are at early stages of development in BiH, some donors in BiH have recognised the efforts made by BiH governments in this area and decided to use local audit systems. Problems with financial audit still remain and significant improvements are required to gain full donors' trust. Improvements undertaken in financial audit should be closely connected to the overall PAR Strategy and its Action Plan.

EVIDENCE:

1) Establishment of internal audit systems

The authorities in BiH are making efforts to establish effective financial audit systems, applicable to all public sectors, including the justice sector. External financial audits are carried out by three Audit Institutions, competent respectively for institutions at the state, Federation of BiH and Republika Srpska level. These three levels of government have established a Coordination Board in order to determine consistent audit standards, ensure consistent audit quality, and determine audit responsibilities in the case of joint activities. Despite the establishment of audit systems, serious shortcomings in practices have been identified by respective State and Entity Audit Institutions at each level of government. Despite numerous findings about the abuse of public funds, few cases of criminal prosecution have been initiated. The lack of enforcement proceedings in cases of mismanagement of funds and the failure of individual institutions to follow up and implement audit findings and recommendations limits donors confidence in the BiH audit systems. The EC Progress Reports on BiH have noted that preparations in BiH financial audit system are improving, but slowly. There is a need of stronger efforts to improve internal financial audit and acting in accordance with audit reports.

2) Limited number of internal audit units in BiH justice sector institutions

The Internal Audit Law has been drafted at state and entity level. In accordance with provisions of this Law it is necessary to establish central harmonisation units (CHU) within MoFT BiH. Among the others things, the role of CHU is to control provisions implementation in the field of internal audit and work coordination between these units and the other institutions. Every budget user is obliged to establish internal audit unit in accordance with standards defined by CHU, taking into account a total annual budget, number of employees, transactions complexity and involved degree of risk. An internal auditor was hired in the late 2009 by the MoJ BiH. However, other justice sector institutions in BiH, due to the lack of financial resources, have not yet established their internal audit units.

3) Limited donor use of BiH Supreme Audit Office

The donors participating in the Enterprise Sector Recovery Fund and the PAR Fund have agreed to entrust the BiH Supreme Audit Office with the responsibility for financial audit of all projects funded through these two funds. There is no other evidence of donor funding in the justice sector utilising BiH audit capacity.

INDICATOR 3: „ALIGNMENT OF AID FLOWS WITH JUSTICE SECTOR PRIORITIES“
PROGRESS LEVEL: „LOW“

In order for donor aid to be effective, it must be aligned with national and sector strategies and priorities. To assess alignment of aid, the Paris Declaration recommends assessing the percent of aid flow to the government sector that is reported on partners' national budgets. In this report the percent of aid flow that is reported in the budgets of justice sector institutions and the degree to which donors align aid with justice sector priorities in BiH is assessed.

Based on the evidence below, the current level of progress in relation to Indicator 3 is rated as low.

EVIDENCE:

1) Significant gap between disbursed aid and aid recorded in BiH justice sector budgets

The existing gap between disbursed aid and aid recorded on the budget(s) is a result of the lack of a coordinated system within the justice sector for reporting donor aid. Previously, donors have worked with individual justice sector institutions directly and aid has not been systematically recorded and regularly updated at the sector level.

2) Alignment with the needs of individual justice sector institutions

There is evidence of donors providing aid in response to requests for funding from individual institutions. EC funding through projects (both Cards and IPA) is based upon requests from individual justice sector institutions. After the adoption of the JSRS there is an improvement in alignment of aid flows with justice sector priorities. Significant step forward in alignment of aid flows with justice sector priorities is expected after the adoption of institutional strategic frames in all BiH justice sector institutions. It is expected that Entity and Cantonal Ministries of Justice, as well as JC BD, will adopt the mentioned frames, which are in accordance with the JSRS, by mid 2010. In this way, BiH justice sector institutions will clearly identify their priorities, which will reflect the priorities of the entire justice sector, which will then be a good base for future aid flows.

3) Need for improvement of system for tracking and recording of donor aid in the BiH justice sector

Tracking and recording of donor aid in the BiH justice sector by BiH MoJ needs to be improved. This will require BiH MoJ to raise awareness among justice sector donors of the importance of reporting aid to it in the future. Bilateral meetings with donors, regular donor coordination meetings, verification of data contained in SSPACEI donor data base and verification of the draft donor matrix of assistance mapped to the core areas of BiH JSRS may all serve as solid starting points. Donors should start providing BiH MoJ SSPACEI with timely information about planned disbursements to allow as accurate as possible budgets to be set, and start separating a greater proportion of their aid for inclusion into respective budgets of State, Entity, Cantonal and BD Governments, linked to the priorities set in the BiH JSRS.

4) Need to improve information flow between BiH justice sector and central institutions

Transparency and predictability of aid flows in the BiH justice sector will be improved if the justice sector can share timely and accurate information on intended and actual disbursements of donor aid with BiH MoJ at sector level and with BiH MoFT at country level. This would help to streamline mechanisms and procedures and reduce the gap between disbursed aid and aid recorded on the budget and further to Ministries of Finance, as central donor coordination institutions at each level of government in BiH.

5) Need for a sector wide approach for donor funding and reporting

To date, there has been no sector wide approach for donor funding in the BiH justice sector. This has led to funding in the sector being responsive to the needs of individual institutions but overall resulting in gaps in funding. Several donors, such as governments of Sweden, Norway, Spain, Great Britain, United States of America and the EC are very supportive of the JSRS as a mean of identifying justice sector priorities for the entire sector. Now that the JSRS has been adopted, it is important for donors to align their funding with the JSRS and consider and elaborate the implementation of a Sector-Wide Approach (SWAp).

INDICATOR 4: „STRENGTHEN CAPACITY BY COORDINATED SUPPORT“ PROGRESS LEVEL: „MODERATE“

The Paris Declaration monitors adherence to this principle at country level as the percent of donor technical cooperation that is implemented through coordinated projects consistent with national development strategies. For the purpose of this evaluation, this indicator is interpreted as the degree to which donors coordinate in the implementation of justice sector priority programmes.

Based on the evidence below, the current level of progress in relation to Indicator 4 is rated as moderate.

EVIDENCE:

1) The high number of institutions and donors in the justice sector has contributed to limited coordination in the past

The high number of institutions and donors operating in the BiH justice sector combined with the absence of a sector strategy has contributed to poor coordination in the justice sector. Even at the country level, where donors have made an effort to provide more joined support there are still few examples of coordination aligned with sector strategies. Exceptions to this are the Public Administration Reform Fund and the Enterprise Sector Recovery Fund.

2) Evidence of informal cooperation at project level exists

While there is no evidence of formal coordination of donors at the sector level, there is evidence of informal cooperation at project level. Many donors and/or their implementing agents have sought to coordinate projects to maximise resources and to reduce the burden of recipient institutions. Largely these coordination efforts happen informally, and are based on the good will of the donor or project staff members.

3) The establishment and operation of the Land Administration Reform Project (LAP) is a good example of coordinated support

The LAP is a good example of donors formally working together to coordinate support. By pooling financial and technical assistance through a PAR Fund, donors have worked together successfully to coordinate their assistance with both their own systems and processes and with the processes of the local recipients. The activities undertaken by the LAP are also in line with funding priorities identified in the JSRS.

4) Examples of coordination at project level evident in the justice sector

Whilst there are few examples of funding being coordinated at sector level, BiH MoJ SSPACEI has, on several occasions, organised a coordination meeting between donor projects providing technical or the other assistance. Bilateral discussions have always resulted with efficient and effective use of donor technical assistance and ensuring adequate resources for needs of donor projects. Coordinated meetings helped to identify areas of potential synergy between donor projects and to eliminate areas of potential overlap and wasteful use of time and resources.

5) Coordination of donor funding aligned with the JSRS will improve performance in this assessment area

Coordination of donor funding aligned with the needs identified in the BiH JSRS will help to facilitate improved coordination of donors assistance to justice sector institutions in BiH.

**INDICATOR 5: „AVOIDING PARALLEL IMPLEMENTATION STRUCTURES“
PROGRESS LEVEL: „LOW“**

The Paris Declaration calls for a substantial reduction in the number of project implementation units (“PIUs”) that are parallel in the sense that decision making and accounting relations involve donors alone.

Based on below indicators, the current level of progress in relation to Indicator 5 is rated as low.

EVIDENCE:

1) Parallel Implementation Units are the rule in the BiH justice sector

As is the case with many other Central and East European developing countries, donors in the BiH justice sector have had legitimate concerns about the capacity of Ministries of Justice in BiH and other key justice sector institutions to implement projects and programs. As a result parallel implementation structures for donor funded projects were established. This approach has caused problems in BiH including staff leaving the civil service to seek employment in higher paying positions in PIUs.

2) At cross-country-level in BiH, some donors (e.g. the World Bank, DFID) have begun to phase out parallel PIUs

A number of other donors working at the justice sector level have expressed an interest in moving in this direction, but have not yet started the process (e.g. SIDA, ADA and GTZ in the Land Administration Reform Project, etc.). A recent trend in a number of the Central and East European developing countries has been the establishment of one PIU for each implementing ministry at sector level as an interim transfer from donor driven PIUs. A similar approach may be explored and gradually applied at the BiH justice sector level in order to start achieving balance between short-term efficiency of PIUs and long-term capacity development of BiH justice sector institutions.

**INDICATOR 6: „PROVISION OF MORE PREDICTABLE AID“
PROGRESS LEVEL: „LOW“**

This indicator seeks to improve not only the in-year predictability of actual aid disbursements but also the accuracy of how they are recorded in justice sector and country systems, which is an important feature of ownership, accountability and transparency.

Based on below indicators, the current level of progress in relation to Indicator is rated as low.

EVIDENCE:

1) Lack of reliable data makes assessment of the degree of predictability of aid disbursement difficult

Many of the challenges identified in a part of the report related to “aligning aid to sector priorities” are relevant for achieving progress in this area as well. The lack of data in this area at both, country and justice sector level in BiH, makes it difficult to identify any tangible differences between actual and predicted aid disbursements.

2) Improved information exchange on donor projects will contribute to the improvement of aid predictability

Despite numerous attempts, and the emphasis on this issue at donor update meetings in the justice sector in BiH, organized by SSPACEI, data exchange is not at a satisfactory level. The database mentioned in the section on indicator 1 was never used as a tool which was recognized by donors, primarily because there is no system that would avoid duplication of giving information to the database that was developed at the state level and those for the sector. Justice sector in BiH, through the Technical Secretariat for the implementation of the JSRS, is expecting to strengthen efforts to enhance cooperation with donors, in order to work together to achieve the accuracy of the information contained in both bases, which would increase the awareness of predictability of aid.

INDICATOR 7: „UNTYING AID“

PROGRESS LEVEL: „LOW“

The Paris Declaration seeks to reduce the amount of 'tied aid' otherwise known as aid development assistance for which the associated goods and services may not be fully and freely procured in substantially all countries.

Based on below indicators, the current level of progress in relation to this Indicator is rated as low.

EVIDENCE:

Lack of data makes assessment of the amount of tied aid difficult

Due to poor mechanisms of reporting and recording donor aid, there is no tangible data about the proportion of tied/untied aid in the BiH justice sector. Any estimates at this stage would give distorted picture. This lack of information further confirms the importance that TS JSRS and SSPACEI, as central coordinating bodies, collect highly precise data on aid in the BiH justice sector. Sporadic evidence suggests that some aid in the sector is still tied (i.e. EC procurement rules restrict potential implementing agencies to the EC, while USAID relies on US implementing agencies). In the road map for achieving this indicator more must be done by donors, as well as the local authorities in order to meet their Paris Declaration commitments.

INDICATOR 8: „HARMONISATION“

PROGRESS LEVEL: „MODERATE“

This indicator seeks to assess the level of donors' commitment to minimise the transaction costs of delivering and managing aid.

Based on below evidence, the current level of progress in relation to this indicator is rated as moderate.

EVIDENCE:

Burden of aid delivery on recipient justice sector institutions is quite high

One of the key aims of the Paris Declaration in the sense of aid effectiveness is to decrease the transaction costs of delivering aid, especially those that burden justice sector institutions by requiring them to manage multiple programs using different donor procedures. Limited progress has been made in the BiH justice sector in this respect. The costs of managing aid are still too high. The donors in the BiH justice sector need to invest more effort to minimise the costs of delivering and managing aid. Also, having in mind the limited capacity of the BiH MoJ and other key justice sector stakeholders to implement multiple aid-funded projects and programs, donors should start increasing the level of complementarities of their own procedures as well as rationalising division of work through coordination of their missions and sharing of country/sector analysis. Activities on establishing joint donor fund for JSRS implementation leads to strengthening capacities of MoJ BiH as well as all stakeholders involved in implementation of the JSRS. This approach represents a step forward towards the implementation of a comprehensive sector approach to aid which increases the degree of matching procedures and rationalizes the division of work.

**INDICATOR 9: „USE OF JOINT MECHANISMS“
PROGRESS LEVEL: „LOW“**

This indicator measures the proportion of aid to the BiH justice sector that is disbursed within a program-based approach.

Based on the evidence below, the current level of progress in relation to Indicator 9 is rated as low.

EVIDENCE:

Use of joint mechanisms is low

Many justice sector projects, particularly in the area of the judiciary, are being implemented throughout BiH. Apart from a few examples of budget support to justice sector institutions in BiH, in particular to the BiH HJPC (such as the Information and Communication Technology Project, Support to BiH Prosecutorial Service Project, Support to Entity Judges and Prosecutors Training Centres Project – which are all being funded through the EU IPA programme and implemented through financial support directly to the BiH HJPC), donors largely use their own procedures to deliver assistance. It is a positive trend that several donors in BiH expressed and increased the interest for applying SWAp-type arrangements, which also take up PBAs (e.g. support to the sector-wide approach programming for public administration reform in BiH and support to economic recovery reforms in BiH, as well as current support to BiH JSRS implementation). Even though the PBAs are a relatively new concept for BiH justice sector institutions, the pace of change in donor practices will need to increase over the following period if the objectives of this indicator are to be achieved.

**INDICATOR 10: „JOINT ACTIVITIES PERFORMANCE AND SHARING ANALYSIS“
PROGRESS LEVEL: „MODERATE“**

Indicator 10 measures the extent to which donors are merging their review and analysis activities at the justice sector level. It also counts the proportion of tasks within the sector that were undertaken jointly by more than one donor and sharing of sector analysis that were undertaken on a joint or coordinated basis.

Based on the evidence below, the current level of progress in relation to Indicator 10 is rated as moderate.

EVIDENCE:

The level of coordinated or joint activities undertaken at justice-sector level in BiH, as well as of joint review and analytical work, notes certain progress

Immediately after the beginning of the USAID justice sector development project (JSDP 2), the technical assistance project IPA 2007 has been initiated, which are, regarding their structure, very similar and include building capacity elements in the field of strategic planning. The harmonised and coordinated activities of those two projects were undertaken by MoJ of BiH, in order to find projects synergy and take advantage of their affiliated efforts. This joint action is not precedent, because in the past there were evident traces of joint assistance, which was frequent situation between SIDA and DfID, Sida and Norwegian assistance, USAID and DfID. One of the JSRS Fund objectives is to increase the level of this indicator and therefore we can say it was increased in relation to the preceding period and to consider it moderate. But; it is clear that Paris Declaration objectives related to this area require increased efforts by both, the donors and local authorities, in order to reach fulfilment of the objectives.

**INDICATOR 11: „MANAGEMENT FOR RESULT“
PROGRESS LEVEL: „LOW“**

One of the distinguishing features of the Paris Declaration is an emphasis on the way improvements in donor and justice sector institutions practices depend on each other and to which extent they affect the mutually reinforcing. The indicator seeks to increase the use of transparent performance assessment frameworks, which can be monitored, in order to assess progress against (a) national development strategies and (b) sector programmes. For this assessment, the indicator is interpreted as reflection of sector based monitoring and performance assessment framework.

Based on the evidence below, the current level of progress in relation to Indicator 11 is rated as low.

EVIDENCE:

1) *Little experience with monitoring and assessment at BiH justice sector level*

Use of evidence on results in the processes of policy improvement and budget planning remains to be a major obstacle in the BiH justice sector. This is partly due to the complex legislative and governance arrangements in BiH.

As noted in the JSRS, Ministries of Justice at the state and entity level, JC BD and the HJPC rarely exchange relevant information. Ministries of Justice rarely collect substantive statistical data regarding their respective areas of responsibility. Developed database of committed heavy crimes within MoJ BiH is still the exception from this example. Ministries of Justice in BiH do not possess any other central database of information that would be useful in the process of strategic planning, policy-development and law drafting preparations.

MoJ BiH, in cooperation with UNDP BiH and UNDOC Research Centre, is trying to develop a database which will compile all relevant information for the BiH justice sector, about trends in civil and criminal matters. This project will improve the process of monitoring and evaluation in the BiH justice sector, as well as policy-development and strategic planning in general.

2) Establishment of performance assessment framework identified in the JSRS

In order to overcome this deficiency, JSRS sets out a strategic programme in its Pillar 5: Well-managed and coordinated sector, requiring the state and entity MoJs, JC BD and HJPC to "Develop and maintain a system of collection, analysis and exchange of all relevant information among the key justice sector institutions". In relation to sector level monitoring and evaluation, the JSRS envisages a number of measures that are aimed at making progress in the field of monitoring and evaluation over the medium-term period. One of the conclusions of the Third Ministerial Conference, and activities started in cooperation with USAID JSDP 2 project, is the establishment of electronic documentation system for monitoring JSRS implementation. This system will represent a turning point of strategic planning, because it will enable the TS for JSRS implementation and MoJ BiH to speed up the processes of implementation monitoring as well as electronic data archiving, which will serve as a base for trend monitoring in future.

3) Upcoming performance monitoring and evaluation of work at BiH MoJ should assist to improve the level of progress related to this indicator

It is also important that BiH MoJ SSPACEI, in cooperation with other key justice sector stakeholders, develop a cost-effective and results oriented reporting system and performance assessment framework. MoJ BiH, with technical assistance provided by SIDA, is currently working on the development of institutional strategic plans and annually agenda, along with the finished project, financed by SIDA and AEICD, on application of uniform reporting formats for the entire sector, as for implementation of BiH JSRS, and as for institutional strategic plans. Once more relevant information is available in the sector, aid effectiveness will be improved if donors start to use this information and refrain from requiring separate reporting.

INDICATOR 12: „MUTUAL ACCOUNTABILITY“ PROGRESS LEVEL: „LOW“

The concept of mutual accountability is an important feature of the Paris Declaration. It is based on the idea that aid is more effective when both donors and partner sector institutions are accountable not only to their respective publics for the use of resources to achieve development results, but also when they are accountable to each other.

Based on below evidence, the current level of progress in relation to Indicator 12 is rated as low.

EVIDENCE:

There is no formal framework for mutual accountability but some of its elements are starting to appear

Justice Sector Donor Coordination meetings, led by the BiH MoJ SSPACEI, should continue to serve as a discussion forum between justice sector institutions and donors and promote gradual movement towards the establishment of specific mechanisms for joint monitoring and evaluation of progress in implementing mutually agreed measures on aid effectiveness at justice sector level in BiH. This and future Monitoring and Evaluation Reports on Aid Effectiveness will also help to develop principles of joint evaluations, despite the absence of any formal framework for such a review. In order for such a review to take place, it would be useful if: the BiH justice sector institutions, led by the BiH MoJ SSPACEI, would improve cross-sector accountability systems; and donors would increase the level of transparency of their projects, results and financial contributions.

NEXT STEPS

This evaluation indicates that, in general, there is limited evidence of the principles of the Paris Declaration being successfully implemented in BiH.

Largely, this still reflects limited capacities within the justice sector institutions in BiH and in some cases even limited application of Paris Declaration principles by the donors providing aid to justice sector institutions. Significant improvements can be made across all 12 indicators identified in this report.

In order to monitor the aid effectiveness in BiH justice sector, monitoring and evaluation activities, such as this report, should be performed regularly. Regular assessment will help ensure that aid effectiveness is seen as a high priority issue for recipients, local institutions in BiH justice sector and donors, as well as the exchange of information on successful aid effectiveness activities and results from lessons learned. Beside that, improvements in aid effectiveness will be acknowledged. Findings and recommendations arising from monitoring and evaluation activities should be presented at Justice Sector Ministerial Conferences as well as at donor coordination meetings.

Constant development and implementation of the JSRS provides significant opportunities for improvements in aid effectiveness for both BiH justice sector institutions and donors. For the justice sector institutions, the JSRS increases local ownership and identifies reform activities that will strengthen institutional processes which will contribute to more effective aid management. For donors, the JSRS provides the opportunity for better coordination and the development of a sector wide approach to funding, among other benefits.

The Paris Declaration is a valuable framework for monitoring and evaluation of aid effectiveness in BiH justice sector. Along with the strengthening of donor coordination capacities in BiH, applicable principles of that Declaration will show commitment to effective aid, which will lead to the recognition of best practices identified in the aid effectiveness community.

SUMMARY OF THE SUGGESTED MEASURES

The following Section provides suggested measures that will assist to improve aid effectiveness in BiH justice sector. These measures are a summary of activities identified previously in the main body of this report. Suggested measures are identified according to the Paris Declaration principles.



- » Devotedly and consistently implement BiH JSRS and its Action Plan 1;
- » Adopt or review institutional strategic plans in accordance with BiH JSRS, and implement them;
- » Improve human resources within BiH MoJ SSPACEI and HJPC BiH by hiring additional civil servants for donor coordination in each of the institutions, and provide continuous training;
- » Work further on the establishment of strategic planning and aid coordination units in FBIH and RS Ministries of Justice and continue designating persons responsible for donors coordination in Cantonal Ministries of Justice and JC BD BiH;
- » Improve the knowledge and skills of all national donor coordination staff;
- » Establish and maintain a forum of donor coordination practitioners at cross-country justice sector level in BiH, and gradually intensify cooperation between its members;
- » Consolidate and maintain coordination mechanisms for justice sector projects proposed for financing by IPA
- » Establish JSRS Fund for BiH JSRS implementation (Steering Board and Technical Secretariat);
- » Complete the analysis of status and proportion of (un) tied aid in BiH justice sector on the basis of donor feedback received through established reporting mechanisms and record of donor assistance to BiH justice sector.



INDICATOR 2a: BUDGET
<ul style="list-style-type: none"> » Establish more efficient system of public financial management and strengthen the control environment in which justice sector institutions operate by implementing measures of the Action Plan 1; the area of Public Finance of BiH Public Administration Reform Strategy; » Improve the budget processes in all justice sector institutions in BiH through priority setting and its linking with national and/or sector strategies and policies, particularly with BiH JSRS priorities; » Adjust sequence and timeframes of activities related to key strategic planning phases and budget preparation throughout the BiH justice sector to ensure full integration of these two processes and coherence between budgets and strategic plans i.e. programme-based budgets; » Further strengthen skills of the justice sector institutions staff in the preparation and execution of budget; » Increased knowledge about local budgeting procedures by donors along with strengthening of strategic planning and budgeting procedures in BiH justice sector institutions.
INDICATOR 2b: PUBLIC PROCUREMENT
<ul style="list-style-type: none"> » Hire an adequate number of staff in individual justice sector institutions and provide them with public procurement training; » Develop recommendations for the simplification of existing public procurement procedures.
INDICATOR 2c: FINANCIAL AUDIT
<ul style="list-style-type: none"> » Ensure that justice sector institutions follow-up and consistently implement financial audit findings and recommendations made by respective Supreme Audit Institutions in BiH » Establish the system of public internal financial control ("PIFC") in justice sector institutions in BiH, in accordance with BiH PAR Strategy and its Action Plan 1.

Programme 3:

HARMONISATION

Contributes to the improvement of coordination and harmonization of aid flows with justice sector priorities and coordination with donors

- » Ensure full alignment of aid flows with justice sector priorities as set out in BiH JSRS;
- » Regularly update the database of donor contacts and make it readily available to all national and international justice sector donor coordination stakeholders;
- » Refine and maintain the database of all projects in BiH justice sector and make it readily available to all justice sector national and international donor coordination stakeholders in BiH justice sector;
- » Develop, validate and maintain the matrix of donor aid mapping to the five pillars of justice sector and their strategic programs, as foreseen in BiH JSRS, and make it readily available to all justice sector national and international donor coordination stakeholders in BiH justice sector;
- » Eliminate areas of donor aid overlapping in BiH justice sector
- » Increase the number of joint donor missions within the justice sector in BiH, including the number of associated analytical and other similar activities;
- » Rationalize the division of work between donors in BiH justice sector, through coordination of their missions and mutual exchange of national and sector analysis;
- » Increase the complementary between the various internal procedures on programs management/ projects management by donors;
- » Implement the selected model of mechanism of joint donor funding for BiH JSRS implementation.

Programme 4:

MANAGEMENT

Provides more effective aid management in BiH justice sector

- » Reduce costs of aid distribution and management in BiH justice sector;
- » Develop the uniform reporting template of donor projects in BiH justice sector;
- » Establish a system of collection, analysis and exchange of all relevant data and information among the key justice sector institutions in BiH as well as between them and donor community.

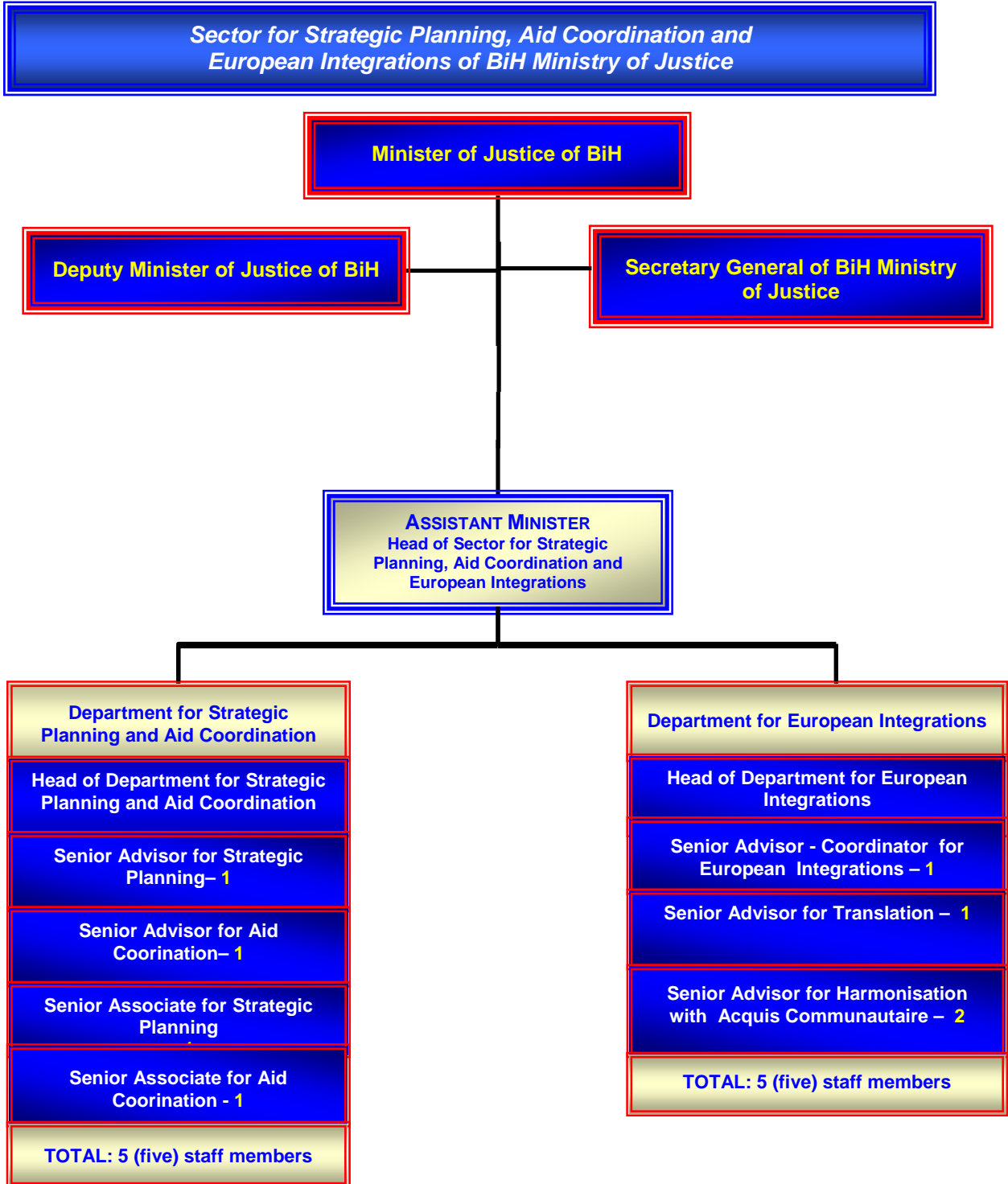
Programme 5:

MUTUAL ACCOUNTABILITY

Provides that donor aid become more predictable and more precisely recorded in the system of BiH justice sector

- » Improve method and way donors provide more reliable information about their disbursements to BiH Ministry of Justice and BiH Ministry of Finance;
- » Provide accurate and timely feedback on donor projects and planned disbursements in BiH justice sector to BiH MoJ SSPACEI, to be included into the justice sector projects database;
- » Streamline mechanisms and procedures to reduce/eliminate the gap between disbursed aid and aid recorded in budgets.

ANNEX I – Diagram of Internal Organisation of the BiH MoJ SSPACEI



ANNEX II - BiH Justice Sector Institutional Relationships

