



Project funded by the European Union  
Projekat finansira Evropska unija



## Terms of Reference (ToR) for a Short-Term Assignment

<b>Technical assistance requested:</b>	Three (3) Senior Non-Key Experts in the areas of investment services, securities markets and financial market infrastructure
<b>Project Title:</b>	Policy and Legal Advice Centre (PLAC II), Serbia
<b>Ref:</b>	EuropeAid/137065/DH/SER/RS
<b>Service Contract No.:</b>	(CRIS) 2016/375-724
<b>Main beneficiary:</b>	The European Integration Office of the Republic of Serbia and the Negotiating Team
<b>Target Beneficiaries:</b>	Ministry of Finance, Securities Commission, Central Securities Depository and Clearing House and Deposit Insurance Agency
<b>Content of the assignment:</b>	Assistance in transposing to the Law on Capital Market and relevant by-laws the following EU acquis: Directive 2014/57/EU, Regulation 2014/596/EU, Regulation 2012/236/EU, Directive 2014/65/EU, Regulation 2014/600/EU, Directive 97/9/EC; Directive 2010/73/EU, Directive 2003/71/EC; Regulation 909/2014/EU, Directive 98/26/EC
<b>Budget Line / Expert Category:</b>	Senior Non-Key Experts
<b>Duration of the assignment:</b>	65 WDs in total, split among 3 NKEs (40 WDs, 10WDs, 15WDs), spent during several missions in the period from October 2017 - June 2018

### 1. Relevant background information

#### Background information in relation to PLAC II project:

The scope of PLAC II project is to provide support to relevant national institutions in charge of alignment of national legal acts with the EU acquis and to contribute to further building of capacities of relevant national structures for successful carrying out of accession negotiations.

The PLAC II project should achieve two results:

**RESULT 1** - Enhanced compatibility of national legislation with EU legislation and its effective implementation,

**RESULT 2** - Enhanced capacities of the relevant national structures for successful carrying out of accession negotiations.

In general, the project aims at fostering the process of accession negotiations of Serbia by supporting the effective alignment of national legislation with the acquis and its implementation and by further building the capacities of involved carriers of the EU integration process in Serbia. After completion of screening process in 2015, Serbian public administration has entered into much more demanding and obliging exercise of accession negotiations, whereby each step and every decision should result in approaching actual membership in the EU. For this scenario to happen in accordance with planned dynamics, preparedness, adequate institutional capacity of public administration with highly competent staff is of crucial importance. In the core period of the negotiations, PLAC II Project shall support domestic line institutions and the negotiating structures both in performance of quality operational work in relation to harmonisation process and in the effective coordination during various stages and phases in the process for different negotiation chapters.



## Background information in relation to Chapter 9 – Financial Services:

The EC Screening Report for Chapter 9 states that Serbia's legislation in the area of securities markets and investment services is specified by the Law on Capital Market and bylaws issued by the Securities Commission, which supervises the implementation of the Law.

The Law on Capital Market is aligned to a large extent with Directive 2004/39/EC on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC. Directive 2004/39/EC together with its amendments and implementing measures sets out a comprehensive regulatory regime covering the authorisation, operation and supervision of investment firms and trading venues. Notable exceptions to the alignment are the status of systematic internaliser, tied agents, home/host Member States as well as the possibility for foreign investment firms to operate through branches and their effective access to the domestic regulated market. However, Serbian legislation is not aligned with Directive 2014/65/EU on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (recast) – MIFID.

Further on, Directive 2003/6/EC of the European Parliament and of the Council on insider dealing and market manipulation was largely implemented in the Serbian national legislation through the Law on Capital Market and its bylaws, except for the buy-back programs and stabilisation of financial instruments. The latest changes to the Law on Capital Market from 2016 achieved partial alignment with the Directive 2014/57/EU on criminal sanctions for market abuse (MAD) and Regulation 596/2014/EU on market abuse (MAR) and repealing Directive 2003/6/EC and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC, with an exception of the financial instruments – emission allowances.

Related to this area, Serbian legislation has to be aligned with Regulation 236/2012/EU on short selling and certain aspects of credit default swaps and Regulation 600/2014/EU on markets in financial instruments and amending Regulation 648/2012. Partial alignment of Serbian national legislation has been achieved with Directive 97/9/EC on investor-compensation schemes.

Serbia's legislation is aligned to a large extent with Directive 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC, through the Law on Capital Market and specific rulebooks. However, the Law has not yet been aligned with respect to cross-border activities and foreign issuers (Chapters IV, V and VI/Arts. 17-23 of Directive 2003/71/EC). Alignment is also required with regard to making punishable the attempt to act unlawfully. Serbian legislation has not yet been aligned with Directive 2010/73/EU amending Directives 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading and 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market.

While there is a high level of compliance of the Law on Capital Market with the *acquis* in some Chapter 9 areas, Serbia will need to fully harmonize its legislation with the relevant *acquis* in the field of securities market and investment services by the end of 2018. The alignment is not achieved with regard to scope and definitions. Also, the remuneration policy for management companies is not regulated and cross-border mergers are prohibited.

Serbia's legislation is not aligned with Regulation 909/2014/EU on improving securities settlement in the EU and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012. The alignment is not achieved with provisions of the Directive 98/26/EC on settlement finality in payment and securities settlement systems. Further alignment with Directive 98/26 and Regulation 909/2014/EU will be conducted by adoption of new Capital Market Law by the Ministry of Finance, and the relevant bylaws of the Central Securities Depository and Clearing House. The conditions



Project funded by the European Union  
Projekat finansira Evropska unija

for the full implementation of Regulation 909/2014/EU will be created by the end of the second quarter prior to Serbia's EU accession.

## 2. Description of the assignment

### 2.1 Specific objectives

The specific objective of this assignment is to assist the members of the Negotiating Group 9, relevant stakeholders and target beneficiaries with the transposition of the following EU acquis in the area of investment services, security markets and financial markets infrastructure: Directive 2014/57/EU, Regulation 2014/596/EU, Regulation 2012/236/EU, Directive 2014/65/EU, Regulation 2014/600/EU, Directive 97/9/EC; Directive 2010/73/EU, Directive 2003/71/EC; Regulation 909/2014/EU and Directive 98/26/EC, in particular in drafting amendments to the Law on Capital Market and relevant bylaws.

### 2.2 Requested services

The Senior NKEs are expected to provide the following services:

- a) To analyse the existing legislation of the Republic of Serbia, assess the level of its compliance with the relevant EU acquis in the area of security markets, investment services and financial markets infrastructure by performing gap analyses in relation to relevant Directives and Regulations of those mentioned above and develop proposals for their adequate transposition into amended national legislation. In carrying out gap analyses and drafting proposals for amendments, the experts shall cooperate among themselves and ensure that all relevant aspects in relation to the areas concerned are addressed in harmonised manner, whereby SNKE 1 shall be responsible for overall coordination of findings and proposals for improvements;
- b) To present to target beneficiaries the findings on the gaps identified and proposals for harmonisation of the national legislation with the relevant EU acquis in line with the best EU practices, at a workshop or during joint meeting with various counterparts, as appropriate and agreed with the target beneficiary;
- c) To draft provisions of the new Law on Capital Market and/or relevant bylaws transposing the aforementioned Directives and Regulations in the respective areas.

### 2.3 Outputs

The **Senior NKE 1** (Investment service specialist) is expected to deliver the following outputs:

- A gap analysis of the existing national legislation with relevant EU acquis (Directive 2014/57/EU, Regulation 2014/596/EU, Regulation 2012/236/EU, Directive 2014/65/EU, Regulation 2014/600/EU, Directive 97/9/EC);
- A presentation of identified gaps, EU best practices and proposals for harmonisation at a workshop or during joint meeting with various counterparts, as appropriate and agreed with the target beneficiary;
- Proposal of new/amended provisions in relation to transposition of the specified EU Directives and Regulations, incorporated in the new Law on Capital Market and relevant bylaws based on the discussion and inputs by representatives of respective institutions, as well as the input provided by NKE 2 and NKE 3, if applicable.



Project funded by the European Union  
Projekat finansira Evropska unija

The **Senior NKE 2** (Securities market specialist) is expected to deliver the following outputs:

- A gap analysis of the existing national legislation with relevant EU acquis (Directive 2003/71/EC and Directive 2010/73/EC);
- A presentation of identified gaps, EU best practices and proposals for harmonisation at a workshop or during joint meeting of various counterparts, as appropriate and agreed with the target beneficiary;
- Proposal of specific new/amended provisions in relation to transposition of the specified EU Directives, incorporated in the new Law on Capital Market and relevant bylaws based on the discussion and inputs by representatives of respective institutions, as well as the input provided by NKE 1 and NKE 3, if applicable.

The **Senior NKE 3** (Financial market infrastructure specialist) is expected to deliver the following outputs:

- A gap analysis of the existing national legislation with relevant EU acquis (Regulation 909/2014 EU and Directive 98/26/EC);
- A presentation of identified gaps, EU best practices and proposals for harmonisation at a workshop or during joint meeting of various counterparts, as appropriate and agreed with the target beneficiary;
- Proposal of specific new/amended provisions in relation to transposition of the specified EU Regulation and Directive, incorporated in the new Law on Capital Market and relevant bylaws based on the discussion and inputs by representatives of respective institutions, as well as the input provided by NKE 1 and NKE 2, if applicable.

## 2.4 Reporting

The NKEs shall provide the following reports by using the templates of the Project:

- Brief Mission Reports with description of activities and outputs provided, at the end of each mission under this assignment,
- Final Mission Report, no later than 1 week after completion of tasks under this assignment. This report will include description of all activities and outputs provided by two NKEs in the context of this assignment.

Submission of reports:

- Draft mission reports shall be submitted to the Team Leader of the Project for review and comments at the end of the mission.
- Final version of the mission report reports prepared in the relevant quality shall be submitted to the Team Leader of the Project for review, comments and final approval. The reports shall be signed by the NKE and the Team Leader, responsible for endorsing the reports.
- The reports and all prepared documents shall be submitted in hard copy and electronic version to the Team Leader of the project.

## 2.5 Specifics

The NKEs shall work under the guidance and follow the instructions of the Team Leader. The NKE shall collaborate with the project team, other experts involved and representatives of beneficiary institutions and national structures, as relevant.



Project funded by the European Union  
Projekat finansira Evropska unija

The NKEs' activities and outputs mentioned above may be adjusted by the Team Leader at any stage in the implementation of the Project, depending on the evolving needs of the Project, main beneficiary and/or target beneficiaries. Each of the short-term mission, its timing and duration shall be agreed with the Team Leader prior to each mission.

## **2.6 Final use of intervention and perspectives for the future**

The assistance in drafting specific provisions and amendments to the Law on Capital Market and relevant bylaws in relation to the transposition of the specified EU *acquis* will contribute to further harmonisation of the national legislation with Chapter 9 *acquis*.

## **3. Expert input**

### **3.1 Total working days**

65 working days (WDs) in total, split among 3 NKEs as follows: 40 WDs for SNKE 1, 10 WDs for SNKE 2 and 15 WDs for SNKE 3.

### **3.2 Period of the assignment**

October 2017 – June 2018

### **3.3 Starting day**

It is expected that the work will be performed during several missions and starting, at the earliest, from 20 October 2017 onwards. However, exact starting date will be agreed at a later stage.

### **3.4 Location/Place of assignment**

The NKEs have to deliver 100% of the input in Belgrade, Serbia.

### **3.5 Working language**

English

## **4. Expert Profiles**

### **4.1 The Senior NKE 1 in the field of investment services:**

#### *4.1.1 Qualifications and skills (25 points)*

- University degree (where university degree has been awarded on completion of three years' study in a university or equivalent institution) in Law, Economy, Finance or similar, relevant to the assignment
- Proficiency in English language
- Computer literacy (MS Office applications)

#### *4.1.2 General professional experience (25 points)*

- Minimum 10 years of postgraduate professional experience in the field of investment services gained in an EU Member State

#### *4.1.3 Specific professional experience (50 points)*



- Proven professional experience in harmonisation of legislation in relation to EU *acquis* and related to Chapter 9 – Financial Services, gained in an EU Member State
- Proven professional experience in drafting of legislation in direct relation with MAD, MAR and MIFID II would be an asset
- Previous professional experience and/or knowledge of the legislation of the Republic of Serbia in the respective area would be an advantage

#### **4.2 The Senior NKE 2 in the field of securities market**

##### *4.2.1 Qualifications and skills (25 points)*

- University degree (where university degree has been awarded on completion of three years' study in university or equivalent institution) in Law, Economy, Finance or similar, relevant to the assignment
- Proficiency in English language
- Computer literacy (MS Office applications)

##### *4.2.2 General professional experience (25 points)*

- Minimum 10 years of postgraduate professional experience in the field of securities market gained in an EU Member State

##### *4.2.3 Specific professional experience (50 points)*

- Proven professional experience in harmonisation of legislation in relation to EU *acquis* and related to Chapter 9 – Financial Services, gained in an EU Member State
- Proven professional experience in drafting of legislation in direct relation with cross-border offers and admission to trading as regulated by Directives 2003/71/EC and 2010/73/EU would be an asset
- Previous professional experience and/or knowledge of the legislation of the Republic of Serbia in the respective area would be an advantage

#### **4.3 The Senior NKE 3 in the field of financial market infrastructure:**

##### *4.3.1 Qualifications and skills (25 points)*

- University degree (where university degree has been awarded on completion of three years' study in university or equivalent institution) in Law, Economy, Finance or similar, relevant to the assignment
- Proficiency in English language
- Computer literacy (MS Office applications)

##### *4.3.2 General professional experience (25 points)*

- Minimum 10 years of postgraduate professional experience in the field of financial market infrastructure gained in an EU Member State

##### *4.3.3 Specific professional experience (50 points)*

- Proven professional experience in harmonisation of legislation in relation to EU *acquis* and related to Chapter 9 – Financial Services, gained in an EU Member State
- Proven professional experience in drafting legislation in direct relation with securities settlement in the EU and on central securities depositories would be an asset
- Previous professional experience, and/or knowledge of the legislation, of the Republic of Serbia in the respective area would be an advantage



Project funded by the European Union  
Projekat finansira Evropska unija



## 5. Applications

Applications (EU format CV and application letter, both in English) need to be submitted by e-mail to SEPLAC@altairasesores.es not later than 17:00 hrs, 26 May 2017, titled: **“Application for the position – Senior NKE 1 in the area of investment services”** or **“Application for the position – Senior NKE 2 in the area of securities markets”** or **“Application for the position – Senior NKE 3 in the area of financial market infrastructure”**.

A NKE fulfilling relevant profile requirements can apply for more than one of the NKEs' posts and this must be clearly indicated in the application.

References must be available on request. Only short-listed candidates will be contacted.

The Project is an equal opportunity employer.  
All applications will be considered strictly confidential.

Advertised post is not available to civil servants or other officials of the public administration in the beneficiary country, Serbia.

For more information, please contact Project Manager at Altair Asesores S.L.: [m.garcia@altairasesores.es](mailto:m.garcia@altairasesores.es)  
/ Tel. +34 91 3952798