



Project funded by the European Union
Projekat finansira Evropska unija



Terms of Reference (ToR) for a Short-Term assignment

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| Technical assistance requested: | One (1) Senior Non-Key Expert in the area of supplementary occupational pensions |
| Project Title: | Policy and Legal Advice Centre (PLAC II), Serbia |
| Ref: | EuropeAid/137065/DH/SER/RS |
| Service Contract No.: | (CRIS) 2016/375-724 |
| Main beneficiary: | The European Integration Office of the Republic of Serbia and the Negotiating Team |
| Target Beneficiaries: | National Bank of Serbia and Ministry of Labour, Employment, Veteran and Social Affairs |
| Content of the assignment: | Support in drafting amendments to the Serbian Law on Voluntary Pension Funds and Pension Plans, its bylaws and other relevant legislation in order to harmonise national legislation with the Directive (EU) 2016/2341 on the Activities and Supervision of Institutions for Occupational Retirement Provision (IORP 2 Directive) |
| Budget Line / Expert Category: | Senior Non-Key Expert |
| Duration of the assignment: | 35 working days, spent during several missions in the period from September 2017 – (tentatively) 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 national legislation of the Republic of Serbia is partially aligned with *acquis* requirements for occupational pensions and the supervision of institutions for occupational retirement provision. Steps need to be taken towards full alignment, focusing on including cross-border activities. Technical provisions are to be implemented irrespective of operation by Serbia of defined contributions pension scheme.

In the Annual Report of the European Commission concerning progress of the Republic of Serbia in the process of European Integration for 2016, it is stated that full alignment with the Directive (EU) 2016/2341 on the Activities and Supervision of Institutions for Occupational Retirement Provision - IORP 2 Directive (which replaced Directive 2003/41/EG - IORP I Directive) has not yet been achieved.

The prudential rules laid down in IORP 2 Directive are intended both to guarantee a high degree of security for all future pensioners through the imposition of stringent supervisory standards and to clear the way for the sound, prudent and efficient management of occupational pension schemes. Institutions that are completely separated from any sponsoring undertaking and operate on a funded basis for the sole purpose of providing retirement benefits should have the freedom to provide services and freedom of investment, subject only to coordinated prudential requirements, regardless of being considered as legal entities.

In Serbia, occupational pensions are partly regulated by the Law on Voluntary Pension Funds and Pension Plans and its bylaws. There are currently seven (defined contribution based) voluntary pension funds operating in Serbia. They do not have legal entity status. They are owned by fund members in proportion to their share in fund assets and managed by four management companies. The management companies must be closed joint stock companies registered in Serbia and they may be established by domestic and foreign natural and legal persons. Their operating licences are issued by the National Bank of Serbia. Member of a fund can be a natural person, domestic or foreign, involved either directly or through a Pension Plan. Pension Plan is a contract in favour of third parties, concluded under umbrella of the voluntary pension fund, between the employer, association of employers, professional association or trade union and management company, based on which the scheme organiser undertakes to pay pension contributions in favour of its employees or members, while the management company invests the funds pooled. The terms and the procedure for organisation and functioning of pension plans are prescribed by the Ministry of Labour, Employment, Veteran and Social Affairs. There are rules restricting the investment policy of the funds to ensure security, diversification and liquidity: assets may be invested in public debt securities, corporate debt securities (up to 50%), shares (up to 40%), money deposits (up to 35%), real estate (up to 5%) etc. The total investment of fund asset abroad may not exceed 10% of fund assets. The National Bank of Serbia supervises implementation of the Law on Voluntary Pension Funds by its supervision of reports and performance of on-site inspections. The management company's licence may be revoked in case of breach of the Law.

Serbia has to fully harmonise legislation with relevant articles of IORP 2 Directive, in segments related to cross-border activities, investment rules and technical provisions.

Article 59 within Chapter 3 of the Law on the Ratification of the Stabilization and Association Agreement between the European Communities and their Member States, at one side, and the Republic of Serbia, at the other side (RS Official Gazette – International agreements, No. 83/2008) envisages taking-up measures, which allow creation of necessary conditions for gradually ensuring that services are provided by entities established in the territory of a Member State other than that of the entity to whom the services are intended to. Article 91 of the Law on the Ratification of the Stabilization and



Association Agreement envisages cooperation on priority areas related to Community *acquis* in the field of financial services.

The National Programme for the Adoption of the EU Acquis for 2016 – 2018 envisages the preparation of comparative analysis of legislation on licensing conditions for performing cross-border activities by no later than the fourth quarter of 2017. In addition and no later than in the fourth quarter of 2018, the adoption of the amendments to the Law on Voluntary Pension Funds and Pension Plans is foreseen, in order to fully harmonise with the provisions of IORP I Directive. Bearing in mind its replacement by IORP 2 Directive, it means that Serbian legislation has to be harmonised with IORP 2 Directive provisions.

2. Description of the assignment

2.1 Specific objectives

The specific objective of this assignment is providing assistance to involved national authorities in finding the most adequate solution for the transposition of IORP 2 Directive into national legislation, by drafting amendments of the Law on Voluntary Pension Funds and Pension Plans and its bylaws, as well as by drafting the procedures in connection with cross-border activities and supplementary to it, running of training to familiarise the relevant staff with practical examples of conducting respective activities in relation with cross-border operations of Pension Funds.

2.2 Requested services

The Senior NKE is expected to provide the following services:

- a) To analyse the existing legislation of the Republic of Serbia in relation to the requirements of IORP 2 Directive, especially on types of funds, licensing, custody services, investment rules and technical provisions and perform gap analysis of its compliance with IOPR 2 Directive;
- b) To propose possible solution(s)/model(s) to be chosen by the competent Serbian institutions for transposing IORP 2 Directive into national legislation;
- c) To propose draft amendments to the Law on Voluntary Pension Funds and Pension Plans and relevant bylaws, in order to harmonise the existing national legislation with the requirements of IORP 2 Directive;
- d) To present to the beneficiaries, for their consideration, different methodologies for conducting all necessary activities regarding cross-border operations;
- e) To propose, based on discussion with and preliminary input by the beneficiaries, draft Methodology for Pension Funds' Cross-border Operations. Proposal on the Methodology should include all activities that need to be conducted by the relevant authorities, including cases for home and host Member State, as well as activities concerning cooperation with European Insurance and Occupational Pensions Authority (EIOPA). In addition, draft Methodology should define the manner of conducting comprehensive control of the activities of all participants in the pension fund business when the custodians are established in another Member State.
- f) To present to the beneficiaries, for their consideration, different methodologies and practical models for conducting all necessary supervision activities regarding calculation of technical provisions;



- g) To propose, based on discussion with and preliminary input by the beneficiaries, draft Methodology for Conducting Supervision of Technical Provisions. Draft Methodology should, depending on the chosen manner of implementation of IORP 2 Directive, among other things, include all necessary supervision activities regarding calculation of Technical Provisions, having in mind that Technical Provisions currently do not exist in national legislation;
- h) To present to the beneficiaries some practical examples on the pension funds' cross-border operations, as well as practical modalities of supervision activities regarding calculation of Technical Provisions, based on the proposed Methodology.

2.3 Outputs

The Senior NKE is expected to deliver the following outputs:

- A report on the compliance of the existing Serbian legislation with IORP 2 Directive, as regards types of funds, licensing, custody services, investment rules and technical provisions;
- A proposal on possible solution(s)/model(s) for transposing IORP 2 Directive into national legislation;
- A proposal on changes to the Law on Voluntary Pension Funds and Pension Plans and relevant bylaws in order to harmonise the existing legislation with the requirements of IORP 2 Directive;
- Examples of different methodologies for conducting all necessary activities regarding cross-border operations;
- A proposal on draft Methodology for Pension Funds' Cross-border Operations, discussed and agreed with the beneficiary;
- Examples of different methodologies and practical models for conducting all necessary supervision activities regarding calculation of Technical Provisions;
- A proposal on draft Methodology for Conducting Supervision of the Technical Provisions, discussed and agreed with the beneficiary;
- Practical example(s) of the pension funds' cross-border operations, as well as practical modalities for supervision activities regarding calculation of Technical Provisions, based on the proposed Methodology.

2.4 Reporting

The NKE 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 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 NKE 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.

The NKE's 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

Assistance in drafting of the amendments to the Law on Voluntary Pension Funds and Pension Plans, relevant bylaws and other related legislation will contribute to full harmonisation of Serbian legislation with requirements of IORP 2 Directive.

Additionally, assistance in drafting methodologies and running of practical training will contribute to better understanding by the competent bodies of practices for the monitoring of the pension funds' cross-border operations. Having in mind that so far, in the area of occupational pensions, no abroad activity exists in practice and knowing that harmonisation with IORP 2 Directive will allow domestic voluntary pension funds management companies to operate abroad as well as for foreign management companies to operate in Serbia, the aspect of monitoring and supervision is of utmost importance for its contribution to the stability of the market and enhanced protection of funds members' interests.

3. Expert input

3.1 Total working days

35 working days (WDs) have been planned for this assignment.

3.2 Period of the assignment

September 2017 until (tentatively) June 2018

3.3 Starting day

It is expected that the work will be performed during several short-term missions, starting at the earliest from 04 September 2017 onwards. However, exact starting date will be agreed at a later stage.

3.4 Location/Place of assignment

The NKE has to deliver 100% of the input in Belgrade, Serbia.

3.5 Working language

English



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4. Expert Profile

4.1 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 Economy, Law or similar, relevant to the assignment
- Proficiency in English language
- Computer literacy (MS Office applications)

4.2 General professional experience (25 points)

- Minimum 10 years of postgraduate professional experience in the field of supervision of pension funds in the supervisory body gained in an EU Member State or candidate country

4.3 Specific professional experience (50 points)

- Proven professional experience in the implementation of IORP 1 Directive
- Proven professional experience in relevant organizations such as EIOPA, OECD, IOPS 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

5. Applications

Applications (EU format CV and application letter, both in English) need to be submitted by e-mail to SEPLAC@altairasesores.es no later than 17:00 hrs, **20 July 2017**, titled: **"Application for the position – SNKE in the area of supplementary occupational pensions"**.

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 / Tel. +34 91 3952798.