

Terms of Reference (ToR) for a Short-Term assignment No. 13

Technical assistance requested:	One Senior Non-key expert in Chapter 8 – Guidance on the implementation of sectoral analysis in the area of state aid
Project Title:	Policy and Legal Advice Centre (PLAC IV)
Ref:	NEAR/BEG/2023/EA-RP/0175
Service Contract No:	(CRIS) 2024/453-315
Main beneficiary:	The Ministry of European Integration (MEI)
Direct beneficiary:	The Commission for State Aid Control
Content of the assignment:	Technical assistance in preparing the Guidance on the implementation of sectoral analysis in the area of state aid and conducting a workshop to present the Guidance
Budget Line/Expert category	Non-Key Short-Term Senior Expert
Duration of the assignment	20 working days

1. Background information in relation to the PLAC IV project

The overall objective of the PLAC IV is for the Serbian administration to effectively conduct accession negotiations and successfully manage overall EU integration and pre-accession assistance geared towards EU membership.

The purpose of the project is: "to achieve a high level of effective alignment of national legislation with the Union acquis and its implementation".

PLAC IV should achieve two results:

- R1: Enhanced compatibility of national legislation with EU legislation and its effective implementation.
- R2: Enhanced capacities of relevant national structures for successful carrying out of accession negotiations

Article 73 para. 1(iii) of the Stabilisation and Association Agreement between the Republic of Serbia and the EU and its member states (OJ EU, L 278, 18.10.2013, hereinafter: SAA) declared as incompatible with the proper functioning of SAA, insofar as it may affect trade between the EU and Serbia any State aid which distorts or threatens to distort competition by favouring certain undertakings or certain products. Serbia was obliged to establish an operationally independent authority entrusted with the powers necessary for the full application of Art. 73 para. 1(iii) SAA.

Serbia adopted the Law on State Aid Control in 2019 (Official Herald RS, No 73/19, hereinafter: LSAC). The Law established the Commission for State Aid Control (CSAC) as an autonomous and independent organisation that performs public authorities under the law and has a legal personality. The CSAC is competent to determine the existence of state aid and assess its compatibility with state aid rules. The CSAC conducts two types of proceedings: 1) **ex-ante control proceedings** – initiated upon application of a state aid grantor intending to grant state aid; 2) **ex-post control proceedings** – which can be initiated by any interested party who believes that granted state aid violates the law. Under Article 49 LSAC, the CSAC can conduct a sectoral analysis if reasonable assumptions exist that state aid measures in certain economic sectors or based on state aid instruments defined in Article 3 LSAC can significantly restrict or distort competition. Besides, based on the Government's request, the CSAC can analyse a specific type of state aid and its effects on specific economic sectors or markets and report on them to the Government.

The European Commission stated in the Serbia Report 2023 that the implementation of the Law on State Aid Control should be further strengthened. In particular, the notification and standstill obligations are still not systematically respected, and State aid is occasionally provided to economic operators, particularly foreign investors, without prior approval by the CSAC. The EC noted that the law provides the CSAC with accountability to the Parliament and secures its legal independence. However, the operational independence of CSAC needs to be demonstrated by establishing a transparent track record that shows consistent and satisfactory implementation of the law. The CSAC's enforcement capacity should be further strengthened.

As observed by the World Bank, Serbia spends relatively large amounts on state aid programs, many of which must be phased out or restructured to comply with EU laws. Serbia spends significantly more on state aid than EU countries; in 2016, the total cost was 2.2 per cent of GDP—triple the EU28 average. The World Bank reported in Serbia's New Growth Agenda from 2019 that Serbia needs to address several state aid issues, such as

- Sector-specific (vertical) aid dominates, sometimes supporting ailing industries. The EU considers sectoral aid more likely than horizontal state aid to limit competition;
- Horizontal aid supporting common interests like environmental protection, research, innovation, and regional development is much lower in Serbia than in EU countries;
- State-owned enterprises (SOEs) receive about 60 per cent of all corporate subsidies, which often cover operating losses, but SOEs account for just 19 per cent of value-added and formal jobs;
- Most state aid bypasses the domestic firms that may need it most. Startups are more likely to find it difficult to access export, credit, or other markets— but receive only 16% of subsidies and 3% of income tax incentives targeting private domestic firms. Similarly, SMEs are more likely to face market failures than larger domestic firms but receive only 20% of subsidies and 26% of the income tax incentives;
- There is little help for innovators. The share of subsidies distributed to innovating domestic firms (8%) is even lower than these firms' share in total value-added (12%). In other words, targeting firms randomly would have resulted in a higher subsidy share for innovators.¹

There is a consensus that horizontal aid, which applies to all economic operators, has the least effect on distorting competition in the market. In contrast, sectoral aid, which applies to

¹ World Bank Group, *Reforming State Aid for Growth – Serbia's New Growth Agenda*, 2019

individual companies or economic sectors, is more distortive.²

Besides competition distortions, state aid can have other negative effects:

- Excessive profits
- Excessive wages
- Low productivity
- Outdated industrial structure
- Direct costs, administrative costs and distortionary taxes

Sectoral analyses are important tools for state aid authorities to apply state aid laws effectively. Considering that many state aid schemes already exist in Serbia, CSAC can conduct ex-post analysis and assess the effects of these schemes under criteria established by law. Experience from state aid analyses conducted ex-post will lead to some general conclusions as well as a general methodology that will be useful in future ex-ante analyses. In the long term, a state aid authority must aim to carefully analyse all new state aid schemes at an early stage in the decision process. Such analyses should point at possible detrimental effects of a given state aid scheme and assess the scheme's suitability for solving the problem in question. This should lead to better aid schemes and force policymakers and planners to consider alternative regulatory steps other than state aid.

The CSAC has never implemented a sectoral analysis, and its staff lack the expertise to do it. Besides, considering that LSAC is silent on this issue, CSAC needs to establish internal procedures to conduct sectoral analyses.

2. Description of the assignment

a. Specific objectives

The specific objective of this assignment is to draft a guidance document on implementing sectoral analysis in the area of state aid that the CSAC organs will endorse. The guidance will define roles, procedures, and methods for investigating existing state aids in specific economic sectors and assessing their effects on competition, economic and social goals realisation, etc.

The draft Guidance will be presented and discussed with the CSAC officials and staff during a workshop to be organised at the end of the mission.

b. Requested services

The requested Senior NKE is expected to provide the following services:

- a) Draft Guidance on implementing sectoral analysis in the area of state aid;
- b) Prepare and implement a workshop to present Guidance to the CSAC officials and staff.

c. Outputs

The outputs delivered by the NKE shall be as follows:

- Guidance on implementing sectoral analysis in the area of state aid drafted;
- Workshop prepared and implemented.

² Irena Pekarskiene, Jurgita Bruneckiene, Sima Sarlauskaite, "State Aid Impact on Central and Eastern Europe Economies", *Inzinerine Ekonomika-Engineering Economics*, 2023, 34(2), 193–204, 195

d. Reporting

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

- Brief Mission Report with a description of activities and outputs provided at the end of each month, in which tasks under this assignment have been carried out,
- Final Mission Report, no later than one week after completing tasks under this assignment. This report will include a description of all activities and outputs provided by the NKE in the context of this assignment.

Submission of reports:

- All reports prepared in the relevant quality shall be submitted to the Project Team Leader for review, comments, and final approval. The reports shall be signed by the NKE and the Team Leader responsible for endorsing them.
- The reports and all prepared documents shall be submitted to the Project Team Leader in hard copy and electronic form.

e. Specifics

The Senior NKE shall collaborate with the Project Technical Assistance Team to prepare and implement the tasks specified above. The Team Leader may adjust the NKE's activities and outputs at any stage in the project's implementation, depending on the evolving needs of the Project and the main beneficiary.

The Senior NKE shall ensure that guidance on implementing sectoral analysis in the area of state aid is aligned with EU best practices concerning applying state aid rules. The Senior NKE shall closely coordinate the activities with the CSAC, the Project Assistance Team, and others, as relevant, to ensure that aspects related to the implications of EU integration for Serbia are incorporated into all activities carried out by the Project.

3. Expert's input

Total working days	20 working days (WDs) have been planned for this assignment. An additional number of WDs may be allocated for this ToR should the needs of the main beneficiary require an extension for the activity areas mentioned in this ToR.
Period of the assignment	October 2024 – March 2025
Starting day	The work is expected to be performed from October 2024 onwards. However, the exact starting date will be agreed upon later.
Location/place of assignment	The base of operation will be in Belgrade, Serbia, and the Project will provide office facilities.
Working language	English

4. Expert's profile

Qualification and skills (25 points)	<ul style="list-style-type: none"> • Relevant university degree, preferably in fields related to law, economy, business management or similar related to the assignment • Excellent English language drafting and reporting skills • Excellent analytical, interpersonal and communication skills • Computer literacy (MS Office applications)
General professional experience (25 points)	<ul style="list-style-type: none"> • Minimum 8 (eight), preferably 10 (ten) years of relevant professional experience • At least 5 (five) years of experience in the area of competition and state aid law harmonisation and/or enforcement in the EU member or candidate state
Specific professional experience (50 points)	<ul style="list-style-type: none"> • At least 3 (three) years of experience in conducting analyses in the field of competition and state aid gained in a competition and/or state aid authority, within donor-funded projects or as an independent or private company consultant • Knowledge of the Serbian competition and state aid law would be an asset • Knowledge of the Serbian/Croatian/Bosnian language would be an asset.

5. Applications

Applications with EU-format CVs in English need to be submitted by e-mail to domi@ibf.be with a copy to bortolameazzi@ibf.be by 17:00 hrs, 31 October 2024, titled "Application for the position—Senior Non-Key Expert in Chapter 8—Guidance on the implementation of sectoral analysis in the area of state aid."

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

The Project is an equal-opportunity employer that encourages applications from women and minorities. All applications will be considered strictly confidential.

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

For more information, please contact the Project Director at IBF: bortolameazzi@ibf.be