

Policy and Legal Advice Centre (PLAC III)

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

Technical assistance requested:	1 (one) Senior Non-Key Expert in the area of Negotiating Ch. 8 Competition policy, Antitrust and Mergers - Vertical Restraints
Project Title:	Policy and Legal Advice Centre (PLAC III), Serbia
Ref:	EuropeAid/139295/DH/SER/RS
Service Contract No.:	(CRIS) 2018/404-529
Main beneficiary:	The Ministry for European Integration of the Republic of Serbia
Target Beneficiaries:	Negotiating Group Ch. 8; Commission for Protection of Competition of the Republic of Serbia
Budget Line/Expert Category:	One Senior Non-Key Expert
Duration of the assignment:	30 working days from January to July 2023

1. Relevant background information

Background information in relation to the PLAC III project:

The scope of the PLAC III 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 III 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 the successful carrying out of accession negotiations

In general, the Project aims to foster the process of accession negotiations of the Republic of Serbia by supporting the effective alignment of national legislation with the Union *acquis* and its implementation and by further building the capacities of involved carriers of the EU integration process in the Republic of Serbia. Upon completion of the screening process in 2015, the Serbian public administration has entered into much more demanding and obliging exercises 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 and adequate institutional capacity of public administration with highly competent staff are of crucial importance. In the core period of the negotiations, the PLAC III project shall support domestic line institutions and the negotiating structures both in the performance of

quality operational work in relation to the harmonisation process and in the effective coordination during various stages and phases in the process for different negotiation chapters.

2. Background information in relation to Chapter 8 - Competition Policy

Negotiation Chapter 8 - Competition policy, covers the fields of anti-trust and mergers, state aid control and liberalisation. The acquis under this chapter includes, inter alia, rules and procedures to fight anti-competitive practices of market participants and to prevent governments from granting state aid which distorts competition in the internal market. It is directly linked with Serbia's obligations under Article 73 of the Stabilisation and Association Agreement signed between the EU and Serbia (SAA) presently in force.

Analytical review and conformity assessment of the Serbian competition legislation with the EU acquis has been performed during explanatory and bilateral screening meetings for Chapter 8 in 2014. As a result of those meetings, the Screening report was issued in November 2015 and the results of the screening were delivered to the Republic of Serbia in February 2016. According to the results, Serbia had to fulfil 6 benchmarks in the state aid field in order to open negotiations under this Chapter. No opening benchmarks in the field of antitrust and mergers were envisaged.

In accordance with Article 73 of the SAA, in the field of antitrust and mergers Serbia has largely transposed the Union acquis and provided for effective means of enforcing such rules by establishing an operationally independent authority – the Commission for Protection of Competition (CPC).

The CPC, as the main competent authority in charge of competition protection in the Serbian market, was established by law in 2005. Over the years, the CPC has developed its administrative and institutional capacities, which resulted in positive remarks in the EC Progress Reports for Serbia.

According to the appraisal from the Screening Report of the EC for Chapter 8 from 2015, the main body of competition rules, found in the primary competition legislation – the Law on Protection of Competition ("Official Gazette of the RS", no. 51/2009 and 95/2013) and secondary competition legislation, represented by various regulations proposed by the CPC and adopted by the Serbian Government, is broadly aligned with the EU acquis.

The country progress report of the European Commission (EC) for Serbia for 2022 (Serbia 2022 Progress Report) published on 12 October 2022 confirms that the legislative framework in the field of competition (antitrust and mergers) is broadly aligned with the relevant acquis (Articles 101 and 102 of the Treaty on the Functioning of the EU) and the related provisions of the SAA. At the same time, it identifies that, inter alia, "the legislative framework has yet to be fully brought in line with the EU guidelines and communications in this area".

In the process of further harmonisation of the national competition legislation with the acquis, the CPC had already drafted proposals of three regulations on block exemption of certain categories of agreements and submitted them to the Government for adoption. Those draft regulations are as follows:

1. Draft Regulation on agreements on the repair and maintenance of motor vehicles and agreements on the distribution of spare parts for motor vehicles exempt from prohibition;
2. Draft Regulation on technology transfer agreements exempt from prohibition;

3. Draft Regulation on agreements between undertakings operating in the rail and road transport market exempt from prohibition.

However, the Union acquis is a dynamic category and the CPC continuously monitors changes in the relevant EU legislation. Most recently, Commission Regulation (EU) 2022/720 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices (the new Vertical Block Exemption Regulation) and Guidelines on Vertical Restraints (2022/C 248/01) have been adopted and entered into effect as of June 1, 2022, which is the new Union acquis.

Therefore, the CPC is considering how to reflect those changes which have taken place at the EU level at the national level, the first option being to draft a proposal for the new Regulation on the Exemption of Vertical Agreements (i.e. between undertakings operating on different levels of production or distribution) with accompanying CPC guidelines applicable to the Serbian market (in accordance with the CPC's jurisdiction) and the alternative option being to draft a proposal of amendments to the existing Regulation on agreements between undertakings operating at different levels of production or distribution chain exempted from prohibition ("Official Gazette of the Republic of Serbia", No. 11/2010) currently in force with the accompanying guidelines.

To that end, expert assistance is needed in order to assist the CPC in producing the relevant draft regulation or amendments to the existing regulation, as well as draft guidelines on vertical restraints reflecting the new Vertical Block Exemption Regulation and 2022 Guidelines on Vertical Restraints with accompanying documents, such as an explanatory note and tables of correspondence

There is no ongoing technical assistance for this area.

3. Description of the assignment

3.1 Specific objectives

The specific objective of this assignment would be to provide in-person assistance to the CPC in the process of transposing the new Vertical Block Exemption Regulation (new VBER) and 2022 Guidelines on Vertical Restraints which have been in force in the EU since June 1, 2022.

While the CPC has its own legal service, the assistance of the expert(s) is expected in order to enhance and fast-track the process of drafting the new or amended national legislation in compliance with the new VBER and 2022 Guidelines of the European Commission.

3.2 Requested services

The Senior NKE is expected to provide the following services:

In cooperation with the CPC:

- a. Produce a draft of a new regulation on the block exemption of vertical agreements or amendments to the existing regulation in compliance with the Commission Regulation (EU) 2022/720 (to be agreed with the CPC);

- b. Produce draft CPC Guidelines on Vertical Restraints which would be applicable in the Serbian legal system;
- c. Produce a draft of necessary accompanying documents, such as an explanatory note and table of concordance (to be agreed with the CPC);
- d. Workshop for the CPC staff to present the outputs of the activity.

3.3 Outputs

The Senior NKE is expected to deliver the following outputs:

1. Draft regulation on the block exemption of vertical agreements or amendments to the existing regulation (to be agreed with the CPC) produced;
2. Draft CPC guidelines on vertical restraints produced;
3. Explanatory note and table of concordance drafted;
4. Workshop held.

3.4 Reporting

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

- A Final Mission Report, no later than 1 week after the completion of tasks under this assignment. This report will include a description of all the activities and outputs provided by the SNKE in the context of this assignment;
- A brief Interim Report - only upon the request of the PLAC III team: TL and/or KE2.

Submission of reports:

- A Final Mission Report prepared in the agreed quality shall be submitted to the Team Leader of the Project for review, comments and final approval;
- The reports shall be signed by the SNKE and the Team Leader, responsible for endorsing the reports;
- The reports and all prepared documents shall be submitted in a hard copy and electronic version to the Team Leader of the Project.

3.5 Specifics

The SNKE shall work under the guidance and follow the instructions of the Team Leader. The SNKE shall collaborate with the Project team, other experts involved and representatives of the relevant beneficiary institutions.

For each of the short-term missions, the timing and duration shall be agreed upon with the Beneficiary and the PLAC III team prior to each planned mission.

3.6 Expert input

3.6.1 Total working days

30 working days (WDs) in total have been planned for the Senior Non-Key Expert for this assignment.

3.6.2 Period of the assignment and starting day

It is expected that the work will be performed through several missions during the period from January until July 2023. However, the starting date will be confirmed at a later stage.

3.6.3 Location/place of assignment

The SNKE must deliver 100% of the input in Serbia, unless otherwise agreed due to extraordinary circumstances (i.e., COVID-19). All home-based days are subject to prior approval by the EU Delegation Project Manager responsible for the PLAC III project.

3.6.4 Working language

English

4. Experts' profile – Senior NKE (30 working days)

1.1 Qualifications and skills (25 points)

- A level of education which corresponds to completed university studies of at least 3 years, attested by a diploma in law, economics or similar, relevant to the assignment;
- Computer literacy;
- Proficiency in report drafting;
- Excellent communication and analytical skills;
- Proficiency in the English language;
- Independence and freedom from conflicts of interest in the undertaken responsibilities.

4.2 General professional experience (25 points)

- At least 8 (eight) years of general postgraduate professional experience related to the EU *acquis*, gained in an EU Member State.

4.3 Specific professional experience (50 points)

- At least 6 (six) years of postgraduate professional experience in drafting competition legislation on antitrust with the European Commission and/or the national competition authority in an EU Member State;
- Experience in practical enforcement of the competition *acquis* will be an advantage.

5. Applications

Applications (EU format CV and application letter in English) need to be submitted by e-mail to mbayard@dmiassociates.com and mail to akhani@dmiassociates.com no later than 16 December 2022, 17:00 hrs, titled:

“Application for the position – Senior NKE in the area of EU Negotiating Ch. 8, Competition Policy, antitrust and mergers – vertical restraints.”

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

Pre-selected experts will be requested to sign a Statement of Availability (SoA) in which they acknowledge and confirm their availability to accomplish this assignment within the indicated period, at the indicated starting date and within the number of working days requested.

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

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

For more information, please contact the Project Manager at DMI Associates Marion Bayard: mbayard@dmiassociates.com or Arianne Khani: akhani@dmiassociates.com.

6. Disclaimer

The implementation of the requested technical assistance and the start of the short-term assignment is subject to the signing and entry into force of the addendum to Service Contract No. (CRIS) 2018/404-529 between the Contracting Authority and the Contractor on the extension of the period of implementation of the tasks of the Policy and Legal Advice Centre (PLAC III) project under IPA 2021 framework.