

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. 3, freedom to provide services and recognition of professional qualifications in the field of environmental protection
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 of European Integration of the Republic of Serbia and the Negotiating Team
Target Beneficiaries:	Negotiating Group Ch. 3; Ministry of Environmental Protection (MoEP)
Budget Line /Expert Category:	One Senior Non-Key Expert
Duration of the assignment:	28 working days (WD), from December 2021 until May 2022 (28 WD for SNKE)

1. Relevant background information

Background information in relation to PLAC III project:

The scope of 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 successful carrying out of accession negotiations

In general, the project aims at fostering 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. 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 III 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.

2. Background information in relation to Chapter 3 - Right of Establishment and Freedom to Provide Services

With the Stabilization and Association Agreement, the Republic of Serbia committed itself to harmonising the national legislation in the field of the right to establishment and cross-border provision of services. Bearing in mind that services in the Republic of Serbia are not regulated by a single regulation, the National Programme for Adoption of the EU Acquis (NPAA) envisages the transposition of Directive on Services 2006/123/EC is conducted with the adoption of the umbrella law on services and the harmonisation of sectoral regulations governing services that are the subject of the Directive.

In the Republic of Serbia, the Ministry in charge of Chapter 3 is the Ministry of Trade, Tourism and Telecommunications (MTTT). Other ministries are also involved (covering acquis areas of services, mutual recognition of professional qualifications and postal services) such as the Ministry of Education, Science, and Technological Development, Ministry of Health, Ministry of Justice, Ministry of Finance, Ministry of Agriculture, Forestry and Water Management, Ministry of Environmental Protection, Ministry of Construction, Transport and Infrastructure as well as other institutions.

Serbia 2020 Country Report issued by the European Commission states that Serbia is moderately prepared in the areas covered by Ch. 3. Some progress was made on the legislative alignment in the fields of services, postal services and mutual recognition of professional qualifications. In the coming year, Serbia should in particular: a) adopt the horizontal law on services, complete harmonisation of sectoral laws with the horizontal law and the EU acquis and establish a point of single contact via a portal that offers online information to service providers, including all relevant 3 administrative procedures, b) finalise the adoption of secondary legislation in the area of postal services and increase the capacity of the postal services inspectorate, and c) continue harmonisation on mutual recognition of professional qualifications.

The EC has set a benchmark for opening negotiations in Chapter 3, which Serbia has fulfilled. In connection with the opening benchmark, the Programme on Professional Qualifications with the Action Plan (in continuation: The Programme was adopted by the Government in November 2016) The first draft Negotiating Position, presenting the plans concerning future legislative and institutional framework aligned with the acquis in relation to services in the internal market was prepared and send to the European Commission (EC). EC “confirms that NP is a solid draft, with a satisfactory level of maturity. The Negotiating Position is adopted by the Government in November 2019.

In the legal system of the Republic of Serbia, the services falling within the scope of the Services Directive are not governed by a single piece of legislation but rather by a number of sectoral laws and regulations. Therefore, the Republic of Serbia, following the example of most EU Member States, has decided to transpose the Directive by adopting a horizontal piece of legislation and to harmonize all sectoral regulations accordingly.

One of the more pressing issues is the removal of the requirement regarding the Serbian language knowledge, if it is not proportional and if it does not serve to ensure the quality and safety of the performance of an economic activity. Accordingly, by the date of accession of the Republic of Serbia to the European Union, this issue will have been regulated by both general and sectoral legislation in line with the EU acquis.

Republic of Serbia adopted the Law on regulated professions and recognition of professional qualification on September 16, 2019. The Law has effect from the moment of the RS accession to EU. The law regulates the general system of recognition and automatic system of recognition of qualifications. With the adoption of the Law, Directive 2005/36/EC on the recognition of professional qualifications, Directive 2013/55/EU amending the Directive 2005/36/EC and Regulation 1024/2012 on administrative cooperation through the Internal Market Information System ("IMI Regulation") have been transposed into domestic legislation.

The draft Law on services was prepared and submitted to the European Commission for a review and opinion. All recommendations received were accepted and transposed into the draft law. The draft law also got clearance in the Government. However, the proposal of the draft law was not adopted in the Assembly due to the new elections held in 2017 and the draft law underwent two times a new procedure from the beginning, meaning the entire process of re-obtaining opinions of all competent institutions/ministries had to go from start.

In 2020, support of PLAC III project was provided for the sector of environment in order to identify services and professional qualifications in the field of environmental protection to be able to fulfil all the requirements of the Directive 2006/123/EC and Directive 2005/36/EC. Legal gap analysis (LGA), which provides comparison between the provisions of the Directives and the corresponding provisions of the relevant Serbian legislation and draft recommendations on how to achieve a full alignment with the *acquis*, was prepared. The selected expert shall build upon the outputs of this assignment.

At present, there is no on going and/or planned assistance projects for the activities covered by this ToR.

3. Description of the assignment:

3.1 Specific objectives

The specific objective of this assignment is to provide the expert assistance to the Ministry of Environmental Protection (MoEP) more specifically, the support in the harmonisation of national legislation with Directive 2005/36/EC on the recognition of professional qualifications and Directive 2006/23/EC on services in the internal market.

In the scope of this objective, these activities are foreseen:

- Assist the MoEP in drafting amendments to the laws and bylaws in the field of environmental protection and preparing new relevant bylaws in relation to requirements of Directive 2005/36/EC on the recognition of professional qualifications and Directive 2006/23/EC on services in the internal market, based on the outputs performed under the previous PLAC assignment.

The previous PLAC III assignment's outputs were as follows:

- Legal gap analysis (LGA) of environmental legislation in relation to requirements of the art. 11, 14, 15, 23, 24 and 25 of Directive 2006/123 on services in the internal market and recommendations for future harmonisation with the directive drafted.
- Legal gap analysis (LGA) of environmental legislation in relation to requirements of Directive 2005/36/EC on the recognition of professional qualifications and recommendations for future harmonisation with the directive drafted.

In addition, as relatively considerable time has passed since then, fresh discussions shall be held to update previous positions given by the Ministry to the recommended legal interventions.

3.2 Requested services

The Senior NKE in the area of freedom to provide services and in the area of recognition of professional qualifications in the field of environmental protection is expected to provide the following services:

- Hold round table discussions to update the MoEP position on the legal interventions recommended by the previous PLAC assignment
- Support the MoEP in harmonisation with Directive 2005/36/EC on the recognition of professional qualifications and Directive 2006/23/EC on services in the internal market by assisting the MoEP staff in drafting necessary amendments to the Laws and bylaws in the field of environmental protection under the MoEP competences
- Support the MoEP in drafting relevant bylaws necessary to comply with the requirements of Directive 2005/36/EC on the recognition of professional qualifications and Directive 2006/23/EC on services in the internal market in the field of environmental protection, under the MoEP competences.

3.3 Outputs

The Senior NKE is expected to deliver the following outputs:

- Amendments to the laws and bylaws in the field of environmental protection drafted.
- By-laws drafted.

3.4 Reporting

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

- Final Mission Report, not later than one week after the completion of tasks under this assignment. This report will include the description of all activities and outputs provided by the SNKE in the context of this assignment.
- A brief interim report - only upon request of the PLAC III team: the TL and/or KE2

Submission of reports:

- A draft mission report shall be submitted to the Team Leader of the Project for review and comments by the end of the mission.
- The final version of the 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 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.

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

3.6 Expert input

3.6.1 Total working days

28 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 during several missions in the period from December 2021 until May 2022. However, the starting date will be confirmed at the later stage.

3.6.3 Location/Place of assignment

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

3.6.4 Working language

English

4. Experts' Profile – Senior NKE (28 working days):

4.1 Qualifications and skills (25 points)

- A level of education, which corresponds to completed university studies of at least 3 years attested by a diploma such as law, economy, finance or similar, relevant to the assignment
- Computer literacy
- Be proficient in report drafting
- Excellent communication and analytical skills
- Proficiency in English language
- Be independent and free 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, candidate or potential candidate country.

4.3 Specific professional experience (50 points)

- At least 3 (three) preferably 5 (five) years of postgraduate professional experience in drafting legislation related to Right of Establishment and Freedom to Provide Services
- Postgraduate professional experience in harmonisation with Directive 2005/36/EC on the recognition of professional qualifications and Directive 2006/23/EC on services in the internal market in the field of environment will be an asset.
- Knowledge of the legal system of the Republic of Serbia would 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 10 December 2021, 17:00 hrs, titled:

“Application for the position – Senior NKE in the area of Ch. 3, freedom to provide services and recognition of professional qualifications in the field of environmental protection.”

References must be available on request. Only short-listed candidates will be contacted. Pre-selected experts will be requested to sign Statement of Availability (SoA) in which they acknowledge and confirm the 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 Project Manager at DMI Associates Marion Bayard: mail to mbayard@dmiassociates.com or Arianne Khani mail to akhani@dmiassociates.com.