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

Technical assistance requested:	1 (One) Senior Non-Key Expert in the area of freedom of movement for persons and services related to the practice of the profession of lawyer and EU Chapter 3 acquis
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:	Ministry of European Integration of the Republic of Serbia
Target Beneficiaries:	Ministry of Justice of the Republic of Serbia
Content of the assignment:	Raising awareness of the impact of the EU acquis related to the right of establishment and freedom to provide services on the legal profession in Serbia by organising seminars for the representatives of the bar associations
Budget Line / Expert Category:	Senior Non-Key Expert
Duration of the assignment:	15 WDs in total, spent in the period from March to (tentatively) September 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.



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Background information in relation to Chapter 3: Right of Establishment and Freedom to Provide Services and relating to freedom of movement for persons and services related to the practice of the lawyers' profession:

As part of its obligations under Chapter 3 – Right of Establishment and Freedom to Provide Services, the Ministry of Justice of the Republic of Serbia (the Ministry) shall harmonise specific sectoral legislation with EU acquis related to the free movement of lawyers, i.e. with *Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services*, *Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained*, *Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications* (Text with EEA relevance), including relevant Court of the EU judgments concerning the right of establishment and freedom to provide services in regard to lawyers' profession.

The national law currently in force is the Legal Profession Act, i.e. the "Law on Attorneys-at-Law" (Official Gazette of RS No 31/2011 and 24/2012 – decision of the Constitutional Court), which was adopted in 2011. The Law introduced several novelties, among others it abandoned the principle of reciprocity, which was replaced by a new method for determining the conditions for practising law in the Republic of Serbia for lawyers that are foreign citizens. The Law also introduced new forms of work for lawyers and the obligation of lawyers to be insured against professional liability with organisations registered for this type of insurance. This matter is further regulated by the Statute of the Bar Association of Serbia (Official Gazette of RS No 85/2011, 78/2012 and 86/2013), statutes of regional bar associations and the Code of Professional Ethics (Official Gazette of RS No 27/2012).

The Law and relevant regulations therefore present an important step towards partial alignment with the acquis, bearing in mind the need for gradual changes of the relevant provisions of the legislation and the fact that full opening of the market for lawyers from EU MSs would not be relevant before the accession of Serbia to the EU.

The responsibility for the implementation of the acquis on the free movement of lawyers is shared between (1) the Ministry of Justice in charge for amending the Law on Attorneys-at-Law, the Law on the Bar Examination and other laws relevant for the organisation of the judiciary and (2) the competent organisations of lawyers - the Bar Association of Serbia and the Bar Association of Vojvodina, which are both autonomous and independent professional organisations of lawyers. The Bar Associations of Serbia and of Vojvodina are responsible for the adoption of the Statute of the Bar Association and Code of Professional Ethics of Attorneys-at-Law and in cooperation with their member bar associations, they are responsible for implementing laws and regulations.

Pursuant to the national Programme for the harmonisation, transposition and implementation of the professional qualifications *acquis* in the Republic of Serbia and in accordance with the NPAA 2018-2021, in 2018 Serbia needs to actively continue with its progress for achieving harmonisation of the legal framework for the attorney-at-law/lawyer profession with the relevant EU acquis. The drafting of national legislation harmonised with EU acquis lies under the responsibility of the Ministry of Justice. Having in mind the specifics of the attorney-at-law/lawyer profession, which is autonomous and independent profession under the Constitution of the Republic of Serbia, such process must be highly inclusive of the lawyer profession. Moreover, under the current Law on Attorneys-at-Law, the Bar Association of Serbia (BAS) has substantial transferred public authority related to enacting of autonomous chamber acts regulating the profession, of which all have to be harmonised with the EU legislation. Such autonomous BAS acts are the Statute of the Bar Association of Serbia (Official Gazette of RS No 85/2011, 78/2012 and 86/2013), Code of Professional Ethics of Attorneys-at-Law (Official Gazette of RS No 27/2012); Tariff of



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Fees and Expenses Payable for the Work of Attorneys-at-Law (Official Gazette of RS No 121/2012); Rulebook on the Attorney-at-Law Exam, enacted by the Board of Directors of the BAS on 19 April 2012.

Serbia needs to fully harmonise its national legislation with the relevant EU Chapter 3 *acquis* which relates to freedom of movement for persons and services related to the practice of the profession of lawyer/attorney-at-law; more specifically with Directive 77/249/EEC to facilitate the effective exercise by lawyers of freedom to provide services, Directive 98/5/EC to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained and Directive 2005/36/EC on the recognition of professional qualifications, including relevant Court of the EU judgments concerning lawyers' profession.

Planned amendments to the Law on Attorneys-at-Law should be followed by appropriate amendments to by-laws, in particular as regards statutes of bar associations. In view of planned adoption of the *acquis* in the field of legal practice in a comprehensive manner, according to revised draft NPAA 2018-2021 full harmonisation was planned for by the first quarter of 2021. The same plan has been presented in the national Strategy and Programme for harmonisation, transposition and implementation of the professional qualifications *acquis* in the Republic of Serbia. However, all amendments should be effective on the date of accession of the Republic of Serbia to the EU. Prior to the legal drafting of amendment aimed at harmonising the Serbian legislation with the relevant EU *acquis*, it is necessary to familiarise the stakeholders with the changes that in future will affect the lawyers' profession in the Republic of Serbia.

In the context of other related assistance in this field, TAIEX seminar has been envisaged related to the harmonisation with General Services Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, in relation to capacity building of competent national authorities, including the Ministry of Justice and bar associations, both with regard to disputable issues of Directive implementation and in relation to lawyer's fees. The assistance requested in this ToR is complementary to the above-mentioned assistance and this needs to be taken into consideration by the selected expert.

2. Description of the assignment

2.1 Specific objectives

The specific objective of the assistance is the awareness raising by lawyers as active partners in the harmonisation and EU integration process, to become better informed of the EU legislation in the area of freedom of movement for persons and services related to the practice of the lawyers' profession in scope of Chapter 3 *acquis* and their familiarisation with the consequences and benefits of its future application.

More specifically, the representatives of the lawyers' profession/attorneys-at-law in Serbia shall be acquainted with the EU rules concerning provision of services by EU lawyers on a temporary or occasional basis, their establishment on a permanent basis, advertising, the one-office rule, aptitude test and period of adaptation, as well as with the relevant Court of the EU case law, i.e. with the effects on lawyers' profession deriving from the introduction of the EU *acquis* to the Serbian legal order.

2.2 Requested services

The Senior NKE is expected to provide the following services:

- a) To prepare suitable training material on the EU Chapter 3 *acquis* regulating freedom of movement for persons and services related to the practice of the profession of lawyer, namely Directives 98/5/EC, 2005/36/EC and 77/249/EEC, including the jurisprudence of the Court of the EU;



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- b) To run thematic training to the representatives of the lawyers' profession/attorneys-at-law in Serbia on the provisions of Directives 98/5/EC, 2005/36/EC and 77/249/EEC, including the relevant jurisprudence of the Court of the EU, during five 1-day workshops for regional/local bar associations, organised in Belgrade, Novi Sad, Čačak, Niš and Kragujevac.

2.3 Outputs

The Senior NKE is expected to deliver the following outputs:

- Training material that is suitable and practical for the representatives of the lawyers' profession/attorneys-at-law in Serbia on the EU Chapter 3 acquis regulating freedom of movement for persons and services related to the practice of the profession of lawyer, namely Directives 98/5/EC, 2005/36/EC and 77/249/EEC, including the jurisprudence of the Court of the EU;
- Delivery of training, during five 1-day training events organised in Belgrade, Novi Sad, Čačak, Niš and Kragujevac for the representatives of the lawyers' profession/attorneys-at-law in Serbia, for their familiarisation with the provisions of Directives 98/5/EC, 2005/36/EC and 77/249/EEC, including the jurisprudence of the Court of the EU;
- Report on the main findings related to the organised workshops.

2.4 Reporting

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

- Brief Mission Report with description of activities and outputs provided, at the end of each mission, during which tasks under this assignment have been carried out.
- 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 the NKE in the context of this assignment.

Submission of reports:

- Draft Mission Report 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 Report.
- The Report and all prepared documents shall be submitted in hard copy and in 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 and main 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

Harmonisation with the *acquis* regulating free movement of lawyers in the EU does not fall exclusively under Chapter 3 *acquis*. It is also related to Chapter 23 *Judiciary and Fundamental Rights* in general, taking into account that lawyers are imminent part of the judiciary. Running of training for the representatives of the lawyers' profession in Serbia will contribute to better preparedness of Serbia for the harmonisation process with relevant EU *acquis*, considering in particular the need for active participation of professional organisations of lawyers in finding solutions for the alignment of the national legislation with the EU *acquis* and its future implementation.

In order to avoid overlapping and ensure complementarity, assistance planned under TAIEX mentioned earlier in the text will be taken into consideration during the implementation of this assignment.

3. Expert input

3.1 Total working days

15 working days (WDs) in total have been planned for this assignment.

3.2 Period of the assignment

March – (tentatively) September 2018

3.3 Starting day

It is expected that the work will be performed during up to three missions in the period from March 2018 to (tentatively) September 2018. 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 Serbia.

3.5 Working language

English

4. Expert Profile

4.1 *Qualifications and skills (25 points)*

- University degree (where university degree has been awarded on completion of three years study at university or equivalent institution) in 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 covered by Chapter 3 *acquis*

4.3 *Specific professional experience (50 points)*

- Proven professional experience in harmonising national legislation with the Chapter 3 EU *acquis* on the freedom of movement for persons and services, preferably related to the practice of the profession of lawyer



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- Proven professional experience in delivery of training in the area of free movement of lawyers would be an asset;
- Proven professional experience participating in a process of negotiations for EU membership related to EU acquis - Chapter 3 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, **26 February 2018**, titled: **“Application for the position – Senior NKE in the area Chapter 3 *acquis related to lawyers’ profession*”**.

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.