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Pravna podrška pregovorima - Policy & Legal Advice Centre

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

Technical assistance requested:	1 (one) Senior Non-Key Expert in in the area of right of establishment and freedom to provide services EU Negotiating Ch.3,
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:	Ministry of European Integration of the Republic of Serbia and the Negotiating Team
Target Beneficiaries:	Negotiating Group Ch. 3; Ministry of Trade, Tourism and Telecommunications
Budget Line / Expert Category:	One Senior Non-Key Expert
Duration of the assignment:	20 working days; the assignment period from June 2019 – October 2019

1. Relevant background information

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 Stabilisation 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 in the harmonisation of the Serbia legislation with Chapter 3 acquis (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 2018 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:

1. adopt the umbrella law on services, continue to harmonise sectoral regulation with the umbrella law and the acquis and establish a point of single contact as a one-stop-shops for service providers to obtain information and complete administrative formalities online;
2. adopt a new law on mutual recognition of professional qualifications and implement the adopted strategy and action plan;

After the screening meetings held in 2015, the following benchmark for the opening of negotiation in Chapter 3 was set by the European Commission:

“Serbia submits to the Commission a comprehensive and detailed strategy for alignment with the professional qualifications acquis. The strategy must cover all the reforms necessary in terms of legislative alignment and institutional capacity building for the recognition of professional qualifications acquired in other Member States and for the provision of assistance to professionals who qualified in Serbia and wish to provide services in other Member States. The strategy must also cover any adjustments to the training of doctors, dentists, nurses responsible for general care, midwives, pharmacists, veterinary surgeons, and architects necessary to comply with the minimum training requirements outlined in Directive 2005/36/EC of the European Parliament and of the Council on the recognition of professional qualifications. A deadline, a responsible entity and a clear indication of the corresponding provision of EU law must be specified for each action covered by the strategy”.

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 and EC has invited Serbia in 2017 to prepare a Negotiation position (NP). By the date of the accession to the EU, all the outstanding parts of Chapter 3 acquis have to be transposed into Serbian legislation, addressing the requirements of three general areas of the acquis. 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, i.e. Ch 3 - Right of Establishment and Freedom to Provide Services was prepared and send to the EC. A part of the NP refers to the harmonisation of sectoral regulations with the Services Directive. The Program defines further activities towards full alignment with the Directive.

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. Language knowledge will not be a requirement for recognition of professional competences for performing certain economic activities, but rather only for access to the labour market, to the extent to which it is necessary to service providers for engaging in the relevant profession in Serbia, in order to protect consumers as service recipients.

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 was also get 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 a new procedure from the beginning, meaning the entire process of re-obtaining opinions of all competent institutions/ministries had to go from start. The representatives of lawyers' associations also submitted a request through the Ministry of Justice to separately conduct harmonisation with the Directive on Services, that is, to regulate the issue of establishment and cross-border provision of lawyers' services exclusively with the regulations that govern the practicing of law. Accordingly, amendments were made to Article 3 and Article 15 of the draft Law.

An analysis of sectoral regulations has been conducted by the project financed from Norwegian funds and restrictions on the freedom of establishment and cross-border service provision have been identified. The regulations are listed in Annex 1 of the Programme.

Having in mind that more than 3 years have passed since the since the drafting of the document and adoption of the Programme, a new compliance check of alignment of sectoral legislation with the Directive needs to be done in order to check what has been changed in Serbian legislation in the meantime. In addition, the list of the legislation in the Action plan should be updated and recommendations for full harmonization prepared. It is also necessary to amend a number of general and sectoral pieces of legislation governing performance of economic activities.

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 establish the degree of compliance and accordingly revise sectoral legislation listed in the Annex 1 of the Programme with the Directive on Services 2006/123/EC on services in the internal market. The assistance will enhance degree of harmonisation with relevant EU rules and their proper implementation.

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

- Perform a present situation analysis and the level of compliance of the sectoral regulations with Directive on Services 2006/123/EC (analysis of Annex 1 of the Programme)

- Review sectoral legislation regulating services (only the relevant articles in more than 80 sectoral legal acts) that are subject to the Directive, identify non-compliance/barriers and identify the provisions which have to be amended and/or harmonised
- To draft Recommendations how to achieve the full harmonisation of the national legislation and assist in drafting of the identified non-harmonised provisions in of all the sectoral legislation as applicable.

3.2 Requested services

3.2.1 The Senior NKE in the area of freedom to provide services and mutual recognition of qualifications is expected to provide the following services:

- a) Perform a present situation analysis of the state of compliance of the sectoral regulations with Directive on Services 2006/123/EC (analysis of Annex 1 of the Programme);
- b) Preparing a list of findings of identified non harmonised provisions and the barriers for full harmonisation in sectoral laws and regulations
- c) Based on situation analysis of the state of compliance of the sectoral regulations with Directive on Services, draft recommendations for full harmonisation and assist in drafting of the non-harmonised articles in identified legal acts.

3.3 Outputs

The **Senior NKE** are expected to deliver the following outputs:

- A draft report on situation analysis containing recommendations for full harmonisation prepared (identified non harmonised provisions and the barriers for full harmonisation in sectoral laws and regulations as well as list of the provisions of the laws and regulations which have to be harmonised with Directive on Services 2006/123/EC);
- Drafts of the provisions harmonising with the Directive in the identified sectoral legal acts

3.4 Reporting

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

- **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.
- A brief interim report - only upon a request of the PLAC III team: TL and/or KE2.

Submission of reports:

- Draft mission report shall be submitted to the Team Leader of the Project for a review and comments at the completion of the mission.
- Final version of the mission report prepared in the agreed quality shall be submitted to the Team Leader of the Project for a review, comments and the final approval at the agreed time, but not later than 7 days after the TL comments on the draft mission report have been submitted to the expert.
- The reports shall be signed by the SNKE and the Team Leader, who is responsible for endorsing the reports.

- The mission report and all prepared documents shall be submitted in a hard copy and in an electronic version to the Team Leader of the project.

3.5 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 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 mission.

3.6 Expert input

3.6.1 Total working days

20 working days (WDs) in total have been planned for Senior Non-Key Expert.

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 June 2019 – October 2019. The exact starting date will be agreed at later stage.

3.6.3 Location/Place of assignment

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

4. Expert Profile - Senior NKE:

4.1 Qualifications and skills (25 points)

- A level of education, which corresponds to completed university studies of at least 3 years in the relevant field attested by a diploma in law
- Proficiency in English language
- Computer literacy
- Be proficient in report drafting
- Excellent communication and analytical skills
- Be independent and free from conflicts of interest in the responsibilities they take on

4.2 General professional experience (25 points)

- At least 8 (eight) years of general postgraduate professional experience related to the harmonisation of national legislation with Union acquis, gained in an EU member state, candidate or potential candidate country

4.3 Specific professional experience (50 points)

- Postgraduate professional experience in the field of harmonisation of legislation in relation to Union acquis specifically in regard to interpretation, transposition and/or implementation of the Directive on Services 2006/123/EC, gained in an EU member state, candidate or potential candidate country
- Postgraduate professional experience in implementation of Directive on Services 2006/123/EC gained in an EU member state, candidate or potential candidate country will be an advantage
- Knowledge of the Serbian legal system will be an advantage

5. Applications

Applications (EU format CV and application letter, both in English) need to be submitted by e-mail to mbayard@dmiassociates.com and nderxen@dmiassociates.com no later than 27 May 2019, 17:00 hrs, titled: **“Application for the position – Senior NKE in the area of Ch 3 - right of establishment and freedom to provide services ”**

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 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: mbayard@dmiassociates.com or Nina Derxen: nderxen@dmiassociates.com.