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Pravna podrška pregovorima - Policy & Legal Advice Centre

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

Technical assistance requested:	2 (two) Senior Non-Key Experts 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; The Ministry of Environmental Protection (MoEP).
Budget Line / Expert Category:	Senior Non-Key Experts
Duration of the assignment:	40 working days (WD) (25 WD for SNKE 1 – freedom to provide services in the field of environmental protection and 15 WD for SNKE 2 – recognition of professional qualifications in the field of environmental protection), from February 2020 – December 2020

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 Union *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 2019 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:

- adopt the umbrella law on services, complete harmonisation of sectoral laws with the umbrella law and the acquis and establish a point of single contact, as a portal that allow service providers to get information and complete administrative procedures online;
- adopt the law on postal services as well as relevant implementing legislation and increase the capacity of the postal services inspectorate;
- adopt a new law 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) 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 was prepared and send to the EC. European Commission “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.

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. The representatives of lawyers' associations also submitted a request through the Ministry of Justice to be excluded from the Law and alignment will be separately conducted in the sectoral regulations governing this.

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 was commissioned and is underway.

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 assistance to the Ministry of Environmental Protection (MoEP) in order to identify all the relevant services and professional qualifications which fall within the scope of the Directive 2006/123 on services in the internal market and Directive 2005/36/EC on the recognition of professional qualifications.

The experts support is needed to identify all services and professional qualifications in the field of environmental protection in order to fulfil all the requirements of the both Directive on Services and Directive on the recognition of professional qualifications.

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

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

3.2 Requested services

The Senior NKE 1 in the area of freedom to provide services in the field of environmental protection is expected to provide the following services:

- Conduct 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
- Draft Recommendations for future harmonisation with the directive

The Senior NKE 2 in the area of recognition of professional qualifications in the field of environmental protection is expected to provide the following services:

- Conduct legal gap analysis (LGA) of environmental legislation in relation to requirements of Directive 2005/36/EC on the recognition of professional qualifications
- Draft Recommendations for future harmonisation with the directives

3.3 Outputs

The Senior NKE 1 is expected to deliver the following outputs:

- A LGA report in relation to requirements of the art. 11, 14, 15, 23, 24 and 25 of Directive 2006/123 on services in the internal market prepared
- Draft recommendations prepared

The Senior NKE 2 is expected to deliver the following outputs:

- A LGA report in relation to requirements of Directive 2005/36/EC on the recognition of professional qualifications prepared

- Draft recommendations prepared

3.4 Reporting

The SNKEs 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 both SNKEs in the context of this assignment.
- A brief interim report - only upon a request of the PLAC III team: TL and/or KE 2

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 agreed quality shall be submitted to the Team Leader of the Project for a review, comments and the final approval.
- The reports shall be signed by the both SNKEs 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

Both SNKEs shall work under the guidance and follow the instructions of the Team Leader. The SNKEs 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. Having in mind a specific nature of this assignment – the experts will be relying on the results of each other’s work, it is envisaged that the SNKE 1 will begin their work before SNKE 2 commences the first mission.

3.6 Expert’s input

3.6.1 Total working days

40 working days (WDs) in total have been planned for two Senior Non-Key Experts, 25 for SNKE 1 and 15 for SNKE 2.

3.6.2 Period of the assignment and Starting day

It is expected that the work will be performed within the period from February 2020 – December 2020. However, the exact starting date will be agreed at a later stage.

3.6.3 Location/Place of assignment

The SNKEs has to deliver 100% of the input in Serbia.

3.6.4 Working language

English

4. Expert's Profile – Senior NKE1 (25 WD):

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, environmental engineering, or similar relevant to the assignment
- 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 legislation in relation to EU acquis Ch 3 - right of establishment and freedom to provide services, gained in an EU member state, candidate or potential candidate country

4.3 Specific professional experience (50 points)

- Postgraduate professional experience in transposition and/or implementation of Directive 2006/123/EC on services in the internal market with a focus on environmental field
- Postgraduate professional experience in conducting legal gap analysis and/or drafting legislation and/or screening of sectorial legislation alignment with the EU Service Directive
- Knowledge of Serbian legal system will be an advantage

5. Expert's Profile – Senior NKE2 (15 WD):

5.1. 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, environmental engineering, or similar relevant to the assignment
- 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

5.2. General professional experience (25 points)

- At least 8 (eight) years of general postgraduate professional experience related to the harmonisation of legislation in relation to EU acquis Ch 3 - right of establishment and freedom to provide services, gained in an EU member state, candidate or potential candidate country

5.3. Specific professional experience (50 points)

- Postgraduate professional experience in transposition and/or implementation of Directive 2005/36/EC on the recognition of professional qualifications with a focus on environmental field
- Postgraduate professional experience in conducting legal gap analysis and/or screening of sectorial legislation alignment with the EU Directive on professional qualifications
- Knowledge of Serbian legal system will be an advantage

6. Applications

Applications (EU format CV and application letter, both in English) need to be submitted by e-mail to

mbayard@dmiassociates.com and ehoward@dmiassociates.com no later than February 5, 2020, 17:00 hrs, titled: "Application for the position – Senior NKE 1 in the area of Negotiating Ch. 3, freedom to provide services in the field of environmental protection **and/or** Senior NKE 2 in the area of Negotiating Ch. 3, recognition of professional qualifications in the field of environmental protection."

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.

Please note that pre-selected experts are requested to sign a **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 (if any) and within the number of working days requested

For more information, please contact Project Manager at DMI Associates Marion Bayard: mail to mbayard@dmiassociates.com or Elizabeth Howard ehoward@dmiassociates.com