

Policy and Legal Advice Centre (PLAC III)

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

Technical assistance requested:	1 (one) Senior and 1 (one) Junior Non-Key Expert in the area of Negotiating Ch.8, State Aid; Harmonisation of state aid rules with the European Union acquis
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. 8; Commission for State Aid Control
Budget Line /Expert Category:	One Senior and One Junior Non-Key Expert
Duration of the assignment:	40 working days (WD), from August 2020 until September 2020 (20 WD SNKE and 20 WD for JNKE)

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 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 8 – Competition Policy

The Negotiating Chapter 8 is one of the most crucial and difficult chapters in the process of the Republic of Serbia's accession negotiations with EU, especially in the area of state aid. The aim is for Republic of Serbia (RS) to harmonise its legislation and establish a strong state aid control system in order to enable the strengthening of free competition.

In the Screening Report from for Chapter 8 – Competition policy, the European Commission recommended the opening of the negotiations on Chapter 8 after Serbia fulfils certain benchmarks. One of the benchmarks is that Serbia ensures the State Aid Authority's operationally independency and assign it the powers and the resources necessary for the full and proper application of State aid rules, in line with obligations under SAA.

In the Country Progress Report for 2019 the EC states that Serbia is moderately prepared in the area of competition policy. No progress has been made in the field of legislative alignment and enforcement of state aid rules. Therefore, inter alia, in the coming year, Serbia should "... make significant progress in the alignment of its legislation on State aid....".

In 2019, based on the above obligations i.e. commitments undertaken under the SAA and the requirements arising from the negotiation process, the Assembly of the Republic of Serbia adopted the new Law on State aid Control ("OG. no. 73/19) which fully entered into force on 1 January 2020. The Law brings new framework for State aid control system in Serbia, including procedural rules for authorisation, monitoring and ordering the recovery of unlawfully granted state aid, establishes Commission for State aid control (CSAC) as organisationally independent body and strengthens its investigative and enforcement powers towards state aid granting authorities. Thus, the new Law creates legal environment and preconditions for CSAC to become operationally independent and to increase its effectiveness. However, in order to comply with SAA and to be aligned with the respective EU acquis, the Law requires implementing secondary legislation i.e. the whole framework of existing state aid rules set out in Regulation on rules for State aid granting need to be reviewed and updated to take into account missing rules and alignment with EU State aid rules adopted within the process of Modernisation of the EU State aid - SAM reform (2012-2017).

The guidelines issued by the European Commission in the area of state aid have a particular status. The Court of Justice has underlined that Member States have an obligation to cooperate with the European Commission under the provisions of the Treaty relating to state aid. Therefore, as a result of this obligation and because they have accepted the rules laid down in the guidelines, Member States "must apply the guidelines when deciding on an application for aid".

This is of particular importance for the application and transposition of the Union state aid rules into Serbian national legislation. Candidate countries are expected to formulate normative acts in line with the national legal framework and legal traditions and at the same time apply the rules in in with the EU acquis requirement and practice in order to successfully complete harmonisation. Thus, the assistance from PLAC III will contribute to and enhance harmonisation with relevant EU regulations and provide support in meeting the opening benchmarks set for Chapter 8 and the obligations under the SAA, especially regarding to

alignment of the legislation on State aid.

The assistance provided under this assignment will complement the activities planned under IPA Project titled “Support to Commission for State Aid Control”, which started in February 2019 and aimed at further harmonisation of national legislation with the *acquis* and development of the capacities for its enforcement. There is no overlapping between the PLAC III and this project because both of them will deal with the harmonization of state aid rules with different EU state aid pieces of legislation.

However, the selected experts working under IPA and PLAC III projects will cooperate and coordinate the activities under the lead of the CSAC and the both projects’ Key teams.

3. Description of the assignment:

3.1 Specific objectives

The specific objective of this assignment is to provide the expert assistance to the Commission for State Aid Control (CSAC) in drafting secondary legislation on rules for state aid granting to various categories of horizontal aid, such as: aid for regional development, for research and development, for training, for rescue and restructuring as well as aid to small and medium-sized enterprises (SMEs), aid to promote risk finance investments, aid to disadvantaged workers etc.

Alignment is also required with State aid rules regarding energy and environment protection, especially in the area of energy efficiency, energy infrastructure, waste management, as well as in the area of newly established State aid types, such as aid for research infrastructure, aid to make good the damage caused by natural disasters, aid to ports, airports and airlines, aid for culture and cultural heritage, aid to audio-visual services, aid to sport and multifunctional recreational infrastructures and aid for local infrastructure, as well as the rules for granting aid for the deployment of broadband networks, etc.

PLAC III assistance will enhance harmonisation of the Serbian State aid control system with relevant EU State aid secondary legislation (Commission regulations, Frameworks, Guidelines, etc.) and provide support in meeting the opening benchmark set for Chapter 8 and respective SAA obligations.

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

a. Drafting secondary legislation on rules for state aid granting in line with relevant Union state aid *acquis*, in accordance to the Serbian legal system and in line with new Serbian State Aid Law entered into force in January 2020:

- 1) Regulation for criteria and condition for regional State aid for (article 5. Paragraph 3. Law on State Aid Control)
- 2) Regulation for criteria and condition for horizontal State aid for (article 5. Paragraph 3. Law on State Aid Control)
- 3) Regulation for criteria and condition environmental protection and energy State aid (article 5. Paragraph 3. Law on State Aid Control)
- 4) Regulation for criteria and condition in transport sector (article 5. Paragraph 3. Law on State Aid Control)
- 5) Regulation for criteria and condition to assignment De Minimis State Aid (article 8. Paragraph 3. Law on State Aid Control)

- 6) Regulation for critter's and condition State aid for rescuing and restructuring (article 5. Paragraph 3. Law on State Aid Control)
- 7) Regulation for critter's and condition State aid for specific financial instruments (Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees, Communication from the Commission to the Member States on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to short-term export-credit insurance) (article 5. Paragraph 3. Law on State Aid Control)

b. Drafting Tables of concordance with the relevant Union acquis.

3.2 Requested services

The Senior NKE in the area of state aid is expected to provide the following services:

- Assist the CSAC in mapping the drafting secondary legislation (bylaws) based on the rules for state aid granting in line with the relevant Union state aid *acquis* and in accordance with the priorities set out by the CSAC and the State aid law - as listed above (see under 3.1.a)
- Assist the CSAC in drafting bylaws on rules for state aid granting in line with the relevant Union state aid *acquis* as described above (see under 3.1.a)

The Junior NKE in the area of state aid is expected to provide the following services:

- Based on the mapping and the draft bylaws formulated under senior expert input, assist the CSAC in drafting the bylaws in line with the national legal framework, legal traditions and rules set in the Methodology for drafting legal acts in Serbia¹, in order to successfully complete harmonisation.
- Draft Tables of concordance with the relevant Union *acquis* related to Regulation for critter's and condition to assignment De Minimis State Aid (article 8. Paragraph 3. Law on State Aid Control) and Regulation for critter's and condition State aid for rescuing and restructuring (article 5. Paragraph 3. Law on State Aid Control)
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3.3 Outputs

3.3.1 Senior NKE is expected to deliver the following outputs:

- By-laws on rules for state aid granting in line with the relevant Union state aid *acquis* and the State aid law drafted (as listed above under 3.1.a)

3.3.2 Junior NKE is expected to deliver the following outputs:

- By-laws on rules for state aid granting in line with the relevant Union state aid *acquis* shaped in accordance with the Serbian legal order requirements in the Methodology for drafting legal acts (footnote)
- Tables of concordance drafted

¹ The national guidelines on the uniform methodology for drafting legislation (primary and secondary legislation) adopted by the Parliament and the Government respectively (OG RS, no. 21/10 and no. 75/2010)

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 SNKE and the JNKE 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 review and comments at the end of the mission.
- Final version of the mission report reports 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 both NKEs 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 NKEs shall work under the guidance and follow the instructions of the Team Leader. The NKEs 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

20 working days (WDs) have been planned for Senior Non-Key Expert and 20 working days (WD) for Junior 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 in the period from August 2020 until end of September 2020. However, the starting date will be confirmed at the later stage.

3.6.3 Location/Place of assignment

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

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

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 such as law, economy 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 responsibilities they take on

4.2 General professional experience (25 points)

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

4.3 Specific professional experience (50 points)

- At least 3 years of postgraduate professional experience in harmonisation of the national State Aid legislation with the Union State Aid *acquis*
- Postgraduate professional experience in a State Aid regulatory authority of an EU Member State, candidate or potential candidate country will be an advantage
- Knowledge of Serbian legal system will be an advantage

5. Experts' Profile – Junior NKE (20 working days):

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 in law
- 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 responsibilities they take on.

5.2 General professional experience (25 points)

- At least 5 (five) years of general postgraduate professional experience related to Union *acquis* harmonisation gained in an EU member state, candidate or potential candidate country.

5.3 Specific professional experience (50 points)

- Postgraduate professional experience in harmonisation of the national State aid legislation with the Union *acquis*
- 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 July 22, 17:00 hrs, titled:



“Application for the position – Senior or Junior NKE in the area of Ch. 8 - Harmonisation of state aid rules with the Union acquis”

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 Elizabeth Howard ehoward@dmiassociates.com .