

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. 28, Consumer Protection; Cooperation between national authorities
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. 28; The Ministry of Trade, Tourism and Telecommunications (MTTT)
Budget Line /Expert Category:	One Senior Non-Key Expert
Duration of the assignment:	15 working days (WD), from November 2020 until March 2021

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 28 – Consumer and Health Protection; Consumer Protection

The Serbia 2019 Report states by the EC that Serbia is moderately prepared in consumer and health protection. Serbia shall in particular strengthen the administrative capacity of relevant authorities for consumer protection, market surveillance and sanitary inspection. The EC also states that better cooperation mechanisms between the line ministries and consumer organisations need to be established. Similarly, cooperation among consumer protection organisations remains fragmented and requires improvements. The authorities' administrative capacity for consumer protection and the inspection services in charge of consumer protection, product safety and non-safety related issues need further strengthening. The institutional setting and protection of consumer protection rights and interests at the local level require improvement. Unfair commercial practices and contract terms need to be addressed, and vulnerable consumers need to be protected.

Consumer protection in Serbia falls within the competences of the Ministry Trade, Tourism and Telecommunications (hereinafter referred to as MTTT), but as in most countries this area is of a horizontal and multidisciplinary nature. This horizontal nature requires a complex decision-making and implementation process. Even though consumer protection is regarded as a specific policy, it cannot be regulated by a single law and it does not end with the tasks and responsibilities of a single ministry.

Law on Consumer Protection (Official Gazette of RS, no. 62/2014, 6/2016 – other law and 44/2018 – other law), which is the umbrella law, regulates indication of prices, pre-contractual disclosure requirements, unfair commercial practices, off-premises contracts, distance contracts, unfair contract terms, sales contracts and warranty obligations, services contracts, services of general economic interest, timeshare agreements, package travel contracts, and consumer redress, and is under the competences of MTTT.

Analytical review and conformity assessment with the EU acquis, i.e. the Explanatory meeting for the Negotiation Chapter 28 was held in December 2014, while Bilateral one was in February 2015. Screening report was delivered in June 2016 with main findings in consumer protection field being the need to further improve enforcement of consumer rights and the implementation of consumer policies and to reinforce cooperation between line ministries and consumer organisations. Particular attention was given to the ensuring of adequate enforcement capacity and the application of the Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws resulting in designation of the Single Liaison Office. However, in 2017 a new Regulation was adopted - Regulation (EU) 2017/2394 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004 whose application started on 17 January 2020 (hereinafter the Regulation).

Also, European Commission issued Implementing Decision (EU) 2019/2212 on a pilot project to implement certain administrative cooperation provisions set out in Regulation (EU) 2017/2394 on cooperation between authorities responsible for the enforcement of consumer protection laws by means of the Internal Market Information System.

As for the EU Regulation on consumer protection cooperation which was directly invoked in the Screening report, Serbia is fully aware of the fact that its capacities should be brought to the next level in order to respond properly to its obligations and requirements. It is necessary to improve administration's knowledge on European practice particularly in unfair contract terms

field, ADR and ODR from the cooperation perspective of view since Council Directive on unfair terms in consumer contracts, Directive 2013/11/EU on ADR and Regulation (EU) No 524/2013 on ODR are included in the 'laws that protect consumers' interests' which are covered by Article 3.1. of the Regulation. Bearing in mind that the Law on Consumer Protection, stipulates separate Chapters "Consumer protection in the exercise of rights under contracts containing unfair contract terms" and "Consumer complaints and out-of-court settlement of consumer disputes" as well as that the line Ministry conducts the proceedings and impose measures to protect consumers' collective interests, it is of substantial importance to improve its knowledge regarding the cooperation of member states in this field.

A special attention should be paid to the coordination of market surveillance and enforcement activities of the competent authorities in order to see how this Regulation works in practice since Directives and Regulations listed in its Annex include different competences (passengers travelling by air, water, rail and bus, audio-visual services, financial services, etc.) and therefore different institutions.

Analysing the previous Commission communication pursuant to Article 5(2) of Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws, concerning the competent authorities and single liaison offices it is evident that member states have different approach to the market surveillance concerning consumer protection field. In some MS the same institution is both a Single Liaison Office and institution competent for the enforcement of all the EU Directives regulating consumer protection, whereas other MS have diverse competence, meaning that, apart from the Single Liaison Office, other institutions are also competent for the enforcement of the specific EU Directives.

It would be of significance for the representatives of the MTTT to get familiarized with the competences and works of an institution which is a nominated Single Liaison Office, as well as a competent body for unfair contract terms. In addition to this, the experience of a MS country will be of the utmost help since the line Ministry would benefit from their respective experience concerning the adjustment period to the single market and current state of play in the relevant field.

At present, there is a related project assistance - IPA 2018 Twinning Project Reinforcement of consumer protection in Serbia as a respond to the new market challenges. The Project should, among others, provide beneficiaries and stakeholders with the relevant knowledge and best EU practices regarding cross-border issues, ODR, ECC-net, as well as other issues. As stated above, Regulation 2017/2394 lays down the conditions under which competent authorities responsible for the enforcement of Union laws, cooperate and coordinate actions with each other and with the Commission. The scope of the Union laws comprise different institutions which are not all included in the Twinning project as stakeholders due to which is important to scan the system and propose possible solutions for Single Liaison office in Serbia and the mechanisms of cooperation of national institutions – a task which is not predicted in the Twinning project. Twinning project is focused on trainings, workshops and study visits regarding the knowledge and experience of MS countries, while PLAC III should provide comprehensive insight of the current state of play in Serbia and future activities with a workshop where all the stakeholders should be acquainted with the Regulation 2017/2394, obligation of Single Liaison office and their competences in the system. Also, before the creation of the above-mentioned Intranet system, it would be of importance to make an overview which institutions should be concluded in this system so as to be operative from the cross-border cooperation point of view.

This ToR for PLAC III should comprise activities which will be introductory before the activities of the Twinning project start. There is no overlapping between the PLAC III and this project.

3. Description of the assignment

3.1 Specific objectives

The specific objective of this assignment is to analyse the current institutional set-up and recommend necessary improvements with the aim for the administration to adequately respond to the obligations stipulated by the Regulation for consumer protection cooperation and familiarize MTTT and possible other relevant institutions with cooperation of the responsible authorities in the consumer protection field.

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

1. Prepare a comprehensive review of the institutional set-up containing an assessment of necessary technical and human capacities of the future Single Liaison Office, with recommendations in order to ensure coordination between national institutions and at the EU level – all from the Regulation perspective i.e. institutional competences regarding Directives and Regulations listed in the Regulation 2017/2394
2. Organisation of the workshop for relevant institutions' representatives with a focus on Serbian state of play regarding the obligations from the Regulation and on the EU experience in the field

3.2 Requested services

The Senior NKE in the area of cooperation in consumer protection field is expected to provide the following services:

- a) Conduct comprehensive review of the institutional set-up regarding the consumer protection field in relation to Regulation (EU) 2017/2394 i.e. institutional competences regarding Directives and Regulations listed in the Regulation
- b) Conduct an assessment of the necessary technical and human capacities for the future Single Liaison Office (SLO)
- c) Propose Recommendations on how Serbian administration should organise and raise its capacities in order to properly respond to the responsibilities deriving from the EU-membership e.g. development of the institutional set-up to ensure coordination between national institutions at EU level necessary for the Serbian administration in order to adequately function on the Internal market
- d) Prepare and deliver a workshop/training for MTTT and other relevant institutions' representatives with a focus on the EU experience/practice in the field and in reporting to competent authority/ies.

3.3 Outputs

Senior NKE is expected to deliver the following outputs:

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- a) A comprehensive review of the institutional set-up regarding the consumer protection field in relation to Regulation (EU) 2017/2394 drafted
- b) The assessment of the necessary technical and human capacities for the future Single Liaison Office (SLO) including recommendations on development of the institutional set-up drafted
- c) Training delivered

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 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 the SNKE 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 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

15 working days (WDs) in total have been planned for 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 November 2020 until March 2021. The starting date will be confirmed at the later stage.

3.6.3 Location/

The SNKE has to deliver 100% of the input in Belgrade, Serbia, unless otherwise agreed due to the 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.

3.6.4 Working language

English.

4. Experts' Profile – Senior NKE (15 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, agriculture, financing and accounting, political science 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 Ch 28 - consumer protection, gained in an EU member state

4.3 Specific professional experience (50 points)

- Postgraduate professional experience in implementation and enforcement of consumer protection laws
- Postgraduate professional experience in cooperation between national authorities of EU MS responsible for the enforcement of consumer protection laws
- Postgraduate professional experience in developing and/or assessing the institutional and human resources will be an advantage
- Knowledge of Serbian legal system will 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 ehoward@dmiassociates.com no later than 20 August 2020, 17:00 hrs, titled:

“Application for the position - Senior NKE in the area of Consumer Protection, Ch. 28 Harmonisation with the Regulation (EU) 2017/2394 on cooperation between national authorities responsible for the enforcement of consumer protection laws”.

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 .