

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 (SNKE) on Human Rights in Legislative Development and Preparation of a Manual on Human Rights approach in legislative development
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:	The Ministry of European Integration, Ministry of Justice, Secretariat for Legislation, Office for Human and Minority Rights.
Budget Line /Expert Category:	One Senior Non-Key Expert
Duration of the assignment:	50 working days (WD), from July 2020 until April 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, and 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

The European Convention on Human Rights (ECHR) of the Council of Europe (CoE) is the key instrument for human rights protection in Europe. The entering into force of the 2009 European Union (EU) Charter of Fundamental Rights (EU Charter) as a binding legal instrument (Article 6, par. 1. Treaty on the EU) did not devoid the ECHR of its role in the EU legal system as a source of fundamental rights in the form of general principles (Article 6, par. 3. Treaty on the EU). The Treaty on the EU also envisages that the Union shall accede to the ECHR (Art. 6, par. 2, Treaty). Thus, it is incumbent on EU Member States as well as candidate countries to ensure that their respective legal systems comply with the ECHR, given that the basic values enshrined therein: democracy, human rights and rule of law, also underpin the EU constitutional framework (Art. 2, Treaty on the EU). For the same reasons, it is incumbent on the EU Member States to ensure implementation of the EU law within their jurisdiction which is consistent with the EU Charter. The Republic of Serbia (RS) is a signatory to the ECHR and its additional protocols No. 1, 4, 6, 7, 12 and 13, respectively.

The joint position of the European Union with respect to Chapter 23 notes the need for Serbia to strengthen the regime of basic human rights protection (p. 25). In this respect, NPAA sets out a general framework for the harmonisation and strengthening of the human rights standards in the area of political and civil rights, economic and social rights, as well as cultural rights and minority protection (third revised version of the National Program, 2018, pp. 70-76). The Action Plan for Chapter 23 underscores that RS is: “fully committed to the process of European integration and aware that this process requires substantial and fundamental changes in the judiciary, the anti-corruption system and the protection of fundamental rights, both at the normative and the implementation level” (p. 3). With respect to the fundamental rights, the Action Plan makes specific references to several rights which are protected by the ECHR and the EU Charter, respectively, for which legislative or capacity building measures are required: prohibition of torture, degrading and ill-treatment and punishment; freedom of thought, conscience and religion; freedom of expression, including freedom and pluralism of the media; and principle of anti-discrimination and position of socially vulnerable groups (pp. 203-207, Action plan).

The enactment of the 2019 Serbian Law on the Planning System (Official Gazette of the RS, No. 30/2018) and the ensuing Regulation on the Methodology of Public Policy Management and Regulatory Impact Assessment (Official Gazette of RS, No. 8/2019; shorten title,) marked a significant step in the Government’s efforts to create a legal framework conducive to evidence-based public policy, by introducing the regime of baseline and comprehensive ex-ante impact assessment in public policy and legislative development. In this respect, human rights approach complements evidence-based public policy and is an inherent part thereof.

Given the foregoing, there is a need to develop a manual on human rights approach in legislative development which would strengthen the capacity of the targeted beneficiaries to observe human rights standards in the process of drafting laws and regulations arising from the EU negotiation process, as well as in the implementation of the legal framework governing human

rights. In addition, the manual seeks to strengthen the capacity of the Ministry of European Integration with respect to its role as a ministry responsible for monitoring and facilitating the process of alignment of the Republic of Serbia legal system with the Union *acquis*.

The manual is envisaged as a client-friendly tool which the beneficiaries can handily consult: 1) in the assessment of the current national legislation impacting on human rights and its compliance with the Union *acquis*; 2) development of laws and regulations arising from the EU negotiation commitments. Examples of the latter include amendments and supplements to the Law on Prohibition of Discrimination (Action Plan, Chapter 23, 3.6.1.5.) and a new draft Law on Gender Equality (Action Plan, Chapter 23, 3.6.1.8.).

Furthermore, the manual will be utilised with respect to the Government of Serbia fulfilling pending commitments arising from other negotiating chapters impacting on human, economic and social rights as negotiations on those chapters' progress. This pertains to both the chapters that have already been opened (Chapter, 4) as well as chapters that are yet to be opened (chapters, 2, 3, 19, 27, and 28 respectively). The assistance by PLAC III will thus contribute to and enhance the overall harmonisation of national legislation with the Union *acquis*.

The manual will cover the so-called qualified rights (those for which legitimate derogations are envisaged) which are guaranteed by the ECHR and the EU Charter, respectively. With respect to the ECHR, it will cover: right to liberty and security (Art. 5); right to a fair trial (Art. 6); no punishment without law (Art. 7); right to respect for private and family life (Art. 8); freedom of thought, conscience and religion (Art. 9); freedom of expression (Art. 10); freedom of assembly and association (Art. 11); right to marry (Art. 12); right to an effective remedy (13); prohibition of discrimination (Art. 14); derogation in time of emergency (Art. 15); prohibition of abuse of rights (Art. 17); limitation on use of restrictions on rights (Art. 18); protection of property (First Protocol, Art. 1); right to education (First protocol, Art. 2); right to free elections (First protocol, Art. 3); prohibition of imprisonment for debt (Fourth protocol, Art. 1); freedom of movement (Fourth protocol, Art. 2); prohibition of expulsion of nationals (Fourth protocol, Art. 3); prohibition of collective expulsion of nationals (Fourth protocol, Art. 4); procedural safeguards relating to expulsion of aliens (Seventh protocol, Art. 1); right of appeal in criminal matters (Seventh protocol, Art. 2); compensation for wrongful conviction (Seventh protocol, Art. 3); Right not to be tried or punished twice (Seventh protocol, Art. 4); equality between spouses (Seventh protocol, Art. 5); general prohibition of discrimination (Twelfth protocol, Art. 1).

With respect to the EU Charter, the manual will cover: protection of personal data (Art. 8); freedom of the arts and sciences (Art. 13); freedom to choose an occupation and right to engage in work (Art. 15); freedom to conduct a business (Art. 16.); the rights of the child (Art. 24); the rights of the elderly (Art. 25); integration of persons with disabilities (Art. 26); and fair and just working conditions (Art. 31).

In addition, where there is overlapping of rights guaranteed by the ECHR and the EU Charter, such as the case with the right to private and family rights (Art. 7, EU Charter), the right to marry and right to found a family (Art. 9, EU Charter), freedom of thought, conscience and religion (Art. 10, EU Charter), freedom of expression and information (Art. 11, EU Charter), and freedom of assembly and of association (Art. 12, EU Charter), to name a few, the manual will cover the case law of both the European Court of Human Rights and the Court of Justice of the EU, insofar their respective case law set out differing standards.

According to available data from relevant data bases on bilateral, regional and EU funded projects, there is no overlap between projects and current these projects are not covering the

same subject. On behalf of the Ministry of European Integration, the complementary analysis on judgments of the Court of Justice of EU in certain areas, relevant to the Republic of Serbia accession negotiations with the EU will be accomplished through a GIZ support to the public administration reform in Serbia. There is no overlapping between this project or any 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 the expert assistance to the targeted beneficiaries in order to increase their overall capacity and the enhanced compatibility of the national legal system with EU legislation and its effective implementation (Result 1, Plac III), as well as for the successful carrying out of accession negotiations (Result 2, Plac III).

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

- Drafting a manual on human rights approach in legislative development.
- Holding three workshops for the targeted beneficiaries on human rights approach in legislative development.

3.2 Requested services

Senior NKE in the area of human rights approach in legislative development shall

1. Develop and draft a manual on human rights approach in legislative development, which will outline the guiding principles developed by the European Court of Human Rights as well as the Court of Justice of the EU case law regarding the rights protected by the ECHR and the EU Charter.
2. Prepare and hold three workshops for the targeted beneficiaries on the guiding principles of human rights approach in legislative development, illustrated by and based on the European Court of Human Rights and the Court of Justice of the EU pertinent case law.

3.3 Outputs

Senior NKE is expected to deliver the following outputs:

1. A manual on human rights approach in legislative development drafted.
2. Three workshops for the targeted beneficiaries held.

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 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 each 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 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

50 working days (WDs) in total have been planned 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 July 2020 until April 2021. The precise starting date will be agreed at a later stage.

3.6.3 Location/Place of assignment

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

3.6.4 Working language

The working language is English.

4. Experts' Profile – Senior NKE (50 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, political science, international relations, 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 harmonisation of the Union acquis gained in an EU member state, a candidate or potential candidate state.

4.3 Specific professional experience (50 points)

- At least 5 (five) years of postgraduate professional experience in legislative reforms, drafting policy documents and/or drafting legislation, relevant to EU integration process gained in an EU member state, a candidate or potential candidate state.
- Postgraduate professional experience gained in at least two EU funded projects providing technical and capacity building assistance to governments in EU MS, candidate or potential candidate countries, aimed at strengthening the national human rights policy and legal framework.
- Postgraduate professional experience relevant to the process of EU negotiations 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 17 July 17:00** hrs, titled:

“Application for the position – Senior NKE: Preparation of a Manual on Human Rights Approach in Legislative Development.”

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.