

Policy and Legal Advice Centre (PLAC III)

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

Technical assistance requested:	One (1) Senior Non-Key Expert in the area of Negotiating Ch. 9, Financial market infrastructure - Support in the drafting the <i>acquis</i> -compliant internal acts for implementation of the Regulation 909/2014/EU on improving securities settlement (CSDR)
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. 9; Securities Commission (SEC), Central securities depository and clearing house (CSDCH)
Budget Line /Expert Category:	One Senior Non-Key Experts
Duration of the assignment:	40 working days (WD), from December 2021 – May 2022

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 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 high 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 9 – Financial Services – Capital Markets and Investment Services

Negotiating Chapter 9 – Financial services is of a crucial importance to the Republic of Serbia as it is to ensure financial stability and adequate consumer and investor protection. Serbia has opened the negotiations on Chapter 9, within Cluster 2 – Internal market, which means that it has reached a satisfactory level of alignment for securities markets and investment services and it partly applies the *acquis* in this area. However, the regulation in the field of financial services has been evolving rapidly during the last years. Phasing in of the new *acquis* is an on-going process. The EU has encouraged Serbia to continue the process of alignment with the *acquis* and its effective implementation and enforcement.

The EU country progress reports for Serbia for 2020 states that Serbia is moderately prepared in the area of financial services. Some progress was made in this field, especially in the field of banks and financial conglomerates, but no progress has been made in the field of financial infrastructure.

Serbia's legislation is not aligned with the Regulation 909/2014/EU on improving securities settlement in the European Union and on central securities depositories (CSDR) including the provisions of the Directive 98/26/EC on settlement finality in payment and securities settlement systems (SFD). Further alignment with the Directive 98/26/EC and the Regulation 909/2014/EU will be conducted by adoption of the new Capital Market Law by the Ministry of Finance and the relevant bylaws of the Central Securities Depository and Clearing House.

Furthermore, alignment with the Regulation (EU) No 909/2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 requires **implementation of the delegated acts in the field of CSDR**: Commission Delegated Regulation (EU) 2017/389 supplementing Regulation (EU) No 909/2014 as regards the parameters for the calculation of cash penalties for settlement fails and the operations of CSDs in host Member States, Commission Delegated Regulation (EU) 2017/390 supplementing Regulation (EU) No 909/2014 with regard to regulatory technical standards on certain prudential requirements for central securities depositories and designated credit institutions offering banking-type ancillary services, Commission Delegated Regulation (EU) 2017/391 supplementing Regulation (EU) No 909/2014 with regard to regulatory technical standards further specifying the content of the reporting on internalised settlements, Commission Delegated Regulation (EU) 2017/392 supplementing Regulation (EU) No 909/2014 with regard to regulatory technical standards on authorisation, supervisory and operational requirements for central securities depositories, Commission Implementing Regulation (EU) 2017/393 laying down implementing technical standards with regard to the templates and procedures for the reporting and transmission of information on internalised settlements in accordance with Regulation (EU) No 909/2014, Commission Implementing Regulation (EU) 2017/394 laying down implementing technical standards with regard to standard forms, templates and procedures for authorisation, review and evaluation of central securities depositories, for the cooperation between authorities of the home Member State and the host Member State, for the consultation of authorities involved in the authorisation to provide banking-type ancillary services, for access involving central securities depositories, and with regard to the format of the records to be maintained by central securities depositories in accordance with Regulation (EU) No 909/2014, and Commission Delegated Regulation (EU) 2018/1229 supplementing Regulation (EU) No 909/2014 with regard to regulatory technical standards on settlement discipline.

The conditions for the full implementation of the Regulation 909/2014/EU will be created prior to Serbia's EU accession.

One of the recommendations of the previous PLAC Project assistance is that SEC/CSDCH need further assistance in drafting by-laws related to the implementation of CSDR and SFD.

Therefore, the expert assistance is required in the following areas: support in drafting acquis-compliant internal acts of the CSDCH, including the timely elaboration of necessary internal acts, instructions, training plans and other instruments for the smooth implementation of Regulation 909/2014/EU, Delegated Regulation (EU) 2017/392 and Implementing Regulation (EU) 2017/394.

There is no overlapping between this project and any on-going and/or planned assistance covered by this ToR.

3. Description of the assignment:

3.1 Specific objective

The specific objective of this assignment is to support CSDCH in the implementation of the EU acquis namely Regulation 909/2014/EU on improving securities settlement (CSDR) by drafting the CSDCH internal acts aligned with requirements from the CSDR and the relevant delegated acts.

3.2 Requested services

The Senior NKE in the area of financial market infrastructure is expected to provide the following services:

1. Assess the current state of relevant CSDCH internal acts in order to comply with the Union acquis as described above
2. Support the CSDCH in drafting of the acquis-compliant internal acts for implementation of the Regulation 909/2014/EU on improving securities settlement (CSDR) and the relevant delegated acts
3. Provide technical and legal advice on the implementation of the delegated acts in the field of CSDR.
4. Providing training to the CSDCH employees in charge of implementing new internal acts,

3.3 Outputs

Senior NKE in the area of financial market infrastructure is expected to deliver the following outputs:

1. Following CSDCH internal acts drafted:
 - Compliance function policy
 - Internal audit policy
 - Operating rules of the risk management committee
 - Operating rules of the remuneration committee
 - Operating rules of the audit committee

- Operating rules of the user committee
 - Procedure for the assessment of participants, issuers, financial instruments and other financial market infrastructure
 - Complaints management policy
 - CSDCH Investment policy
 - Procedure for the separation of the costs and revenues associated with core services from those associated with ancillary services.
2. Workshop held

3.4 Reporting

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

- Final Mission Report, not later than one week after the completion of tasks under this assignment. This report will include the description of all activities and outputs provided by the SNKE in the context of this assignment.
- A brief interim report - only upon request of the PLAC III team: the TL and/or KE2

Submission of reports:

- A draft mission report shall be submitted to the Team Leader of the Project for review and comments by the end of the mission.
- The final version of the mission report, prepared in the agreed quality, shall be submitted to the Team Leader of the Project for review, comments and 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 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

Total of 40 working days (WDs) 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 during several missions in the period December 2021 - May 2022. However, the exact starting date will be confirmed at the 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). 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. Expert's Profile – Senior NKE in the area of financial market infrastructure (40 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, finance 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)

- Minimum 8 years of postgraduate professional experience related to EU acquis gained in an EU member state, candidate, or potential candidate country

4.3 Specific professional experience (50 points)

- At least 3 (three) preferably 5 (five) years of postgraduate professional experience in drafting legislation related to financial services
- Knowledge of the legislation of the Republic of Serbia in the respective area would 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 mail to akhani@dmiassociates.com no later than 5 November 2021, 17:00 hrs, titled:

"Application for the position – Senior NKE in the area of financial market infrastructure Support in the drafting of the acquis-compliant internal acts for implementation of the CSDR".

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@dmiasociates.com or Arianne Khani mail to akhani@dmiasociates.com.