

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 Cluster 1, Fundamentals, Whistle-blowers' 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 Republic of Serbia and the enhanced negotiating structure in line with the new EU methodology
Target Beneficiaries:	The Ministry of European Integration (MEI), the Coordination for Conducting Negotiations on the Republic of Serbia's Accession to the European Union and Team for Support to Negotiations, Negotiation Groups
Budget Line /Expert Category:	One Senior Non-Key Expert
Duration of the assignment:	25 working days (WD), December 2021 – May 2022

1. Relevant background information

Background information in relation to the 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 highly competent staff is of crucial importance. In the core period of the negotiations, the 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 Cluster 1, Fundamentals, Chapter 23 – Judiciary and fundamental rights

The EU accession represents a comprehensive and substantial reform process that contributes to the development of the candidate country and affects the modernisation of its institutions.

The general position of the European Union is based on the Accession Conference with Serbia (CONF-RS 1/14), and is subject to the negotiating principles endorsed therein, in particular: – any view expressed by either Serbia or the EU on a specific chapter of the negotiations will in no way prejudice the position which may be taken on other chapters; – agreements reached in the course of negotiations on specific chapters, even partial ones, may not be considered as final until an overall agreement has been reached for all chapters; as well as to the requirements set out in points 23, 24, 28, 42, 43, 44 and 48 of the Negotiating Framework.

The EU encourages Serbia to continue the process of alignment with the *acquis* and its effective implementation and enforcement, and in general to develop already before accession, policies, and instruments as close as possible to those of the European Union. The EU notes that Serbia, in its negotiating position (CONF-RS 2/16) accepts the *acquis* under Chapter 23 as in force on 1 January 2016 and that it will be ready to implement it by the date of its accession to the European Union.

The Republic of Serbia 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. In accordance with the pace established by the EU in the development and adoption of documents related to the new - enhanced methodology, following the Council conclusions of 6 May 2021, the negotiating Chapter 23 – Judiciary and Fundamentals Rights become a part of the most important Cluster 1 – Fundamentals, which has got a predominant overall influence on political criteria in the negotiating process.

In this sense, in the process of developing the reform steps in Chapter 23, Serbia was primarily guided by the EU *acquis*. In areas where there is no *acquis* or it does not cover the whole area, the established standards and best comparative practices were used as a guide for creating reforms, particularly considering the legal heritage of the Republic of Serbia, as well as socio-economic factors conditioning the applicability of the solutions that provide good results in other legal systems.

The EU estimated that Serbia has achieved a certain level of preparedness in the fight against corruption, but it still needs to step up its efforts to address certain shortcomings and improve the prevention and suppression of corruption. The EU took note about the entry into force of the new Law on Whistle-blowers (“Official Gazette of RS”, No 128/2014; The Law) and about the training on the implementation of the Law which is underway. Also, the EU has assessed that the legal framework for the protection of whistle-blowers must be aligned with the new *acquis* in order to ensure better protection of whistle-blowers in some areas. The EU invites Serbia to monitor the implementation of the Law and to continue efforts to provide easy access for citizens and officials to various complaint mechanisms. Accordingly, Serbia should monitor the effects of the Law on protection of Whistle-blowers in terms of acting of state authorities upon whistle-blowers disclosures. Whistle-blower protection is essential to safeguard the public interest and to promote a culture of public accountability and integrity. Raising awareness of citizens about the Law on protection of whistle-blowers and raising their readiness to report wrongdoings is expected to improve.

Therefore, the assistance of the PLAC project is needed in order to enhance and monitor the effects of the Law on protection of whistle-blowers in terms of the state authorities' acting upon whistle-blowers disclosures. Also the assistance will contribute to the strengthening of the whistle-blowers' role and ensure that they enjoy a high protection which will contribute in raising the general readiness to report the wrongdoings observed.

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 the expert assistance in establishing basis for further improvement of the legislative framework for the protection of whistle-blowers, state of play regarding the implementation of the current law, as well as to provide best practice for the private sector and an overview of the practice from the Western Balkans and EU countries.

The analysis, which would be an output of the project, should underline not only positive steps forward of the current law, but also highlight the provisions which would need additional improvement in order to enhance the role and the protection of whistle-blowers. The analysis should focus on social aspects and the perception of a whistle-blower in the society, the mechanisms for their protection and the position of officers in charge for whistle-blowers protection envisaged by the Law (a person appointed and authorised to receive whistle-blowers' disclosures and act upon them within a public or a private entity).

In the conduction of the activities and developing the analysis report, the selected expert shall collaborate not only with the beneficiaries mentioned earlier, but also with other stakeholders and counterparts – the Ministry of Justice, other the line ministries responsible for drafting and implementation of the laws and regulations pertinent to the Republic of Serbia commitments towards the European Union membership, institutions responsible for prevention of corruption and human rights protection (i.e. the Agency for Prevention of Corruption, the Ombudsman, the Commissioner for Information of Public Importance and Personal Data Protection, the Commissioner for Equality Protection) and any other institution or/and body relevant for the successful finalisation of the assignment. The MEI and PLAC III project will provide the support to the selected expert in establishing contacts and the organisation of meetings with the counterparts.

3.2 Requested services

The selected expert shall establish the status of whistle-blowers' position and protection in Serbia by conducting, but not limited to, following activities:

- 1) Analysis and comparison of the Serbian Law on Whistle-blowers Protection in relation to:
 - a. whistle-blowers protection laws in the selected Western Balkans and EU countries
 - b. the EU Whistle-blowers Directive¹

¹ Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law

- 2) Collecting available statistics from the Ministry of Justice on Whistle-blowers cases and proceedings
- 3) Collecting available statistics from other relevant organisations and bodies, (e.g. the Ombudsman, the Commissioner for Information of Public Importance and Personal Data Protection, the Commissioner for Equality Protection, the Judiciary, and other relevant NGOs and bodies) on whistle-blowers' cases and proceedings
- 4) Based on the activities listed above, as well as any other relevant activity, elaborate and draft a report containing the analysis on the whistle-blowers' status of the protection in Serbia with recommendations for improvement of its implementation and the solutions for the legislative improvement of a whistle-blowers' position, which should correspond to the obligations of Serbian authorities in accordance with the Action Plan for Chapter 23.

3.3 Outputs

The Senior NKE is expected to deliver the following outputs:

- A report containing the analysis on whistle-blowers' current status of the protection in Serbia with appropriate recommendations for improvement of the implementation of the Law and the solutions for the legislative improvements, as relevant, drafted

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 Beneficiaries and the PLAC III team prior to each planned mission.

3.6 Expert input

3.6.1 Total working days

25 working days (WDs) in total have been planned for the Senior Non-Key Expert.

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 December 2021 until May 2022. However, the 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 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 the PLAC III project.

3.6.4 Working language

English

4. Experts' Profile – Senior NKE (25 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 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 undertaken responsibilities

4.2. General professional experience (25 points)

- At least 8 (eight) years of general postgraduate professional experience with 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 related to prevention of corruption, gained in an EU member state, candidate or potential candidate country
- Postgraduate professional experience working with the issues related to the protection of whistle-blowers will be an asset.
- Knowledge of the 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 mail to akhani@dmiassociates.com no later than 19 November 2021, 17:00 hrs, titled:

“Application for the position – Senior NKE in the field of the prevention of corruption - whistle-blowers protection”.

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 Arianne Khani mail to akhani@dmiassociates.com