

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. 32 - Financial Control, development of institutional set-up for audit and protection of the EU's financial interest
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 for European Integration of the Republic of Serbia
Target Beneficiaries:	Negotiating Group Ch. 32; Governmental Audit Office of EU Funds
Budget Line/Expert Category:	One Senior Non-Key Expert
Duration of the assignment:	40 working days from January until December 2023

1. Relevant background information

Background information in relation to the PLAC III project:

The scope of the 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 the 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 the successful carrying out of accession negotiations

In general, the Project aims to foster 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. Upon completion of the screening process in 2015, the Serbian public administration has entered into much more demanding and obliging exercises 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 are 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 the performance of quality operational work in relation to the 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 32 – Financial Control

Chapter 32 covers several policy areas such as: public internal financial control (PIFC), external audit, protection of the EU's financial interest and protection of the Euro against counterfeiting.

Serbia opened negotiations in Chapter 32 in December 2015.

The EU Common Position notes that Serbia accepts the *acquis* under Chapter 32, and that Serbia declares that it will be ready to implement it by the date of its accession to the EU. Adequate and efficient institutional establishment and capacities at a national and local level are imperative for the application and implementation of the Union *acquis* in the field of financial control. Effective financial control represents a key reform step in establishing budgetary discipline and increasing accountability in public funds management. For effective implementation of the reform in this area, one of the key measures is the strengthening of the legislative framework and institutional and operational capacities of the audit authority for auditing the EU funds management system. This is particularly challenging from a long-term perspective, considering the upcoming need to align framework and capacities with IPA 2021-2027.

The European Commission's Country Progress Report for 2022 (Serbia 2022 Progress Report) indicates that Serbia should ensure full coherence of PIFC legal basis with the horizontal legal framework, extend the implementation of peer reviews of the quality of the internal audit function.

The Governmental Audit Office of EU Funds (**GAO**) was established by the Governmental Decree on establishing the GAO. According to Clause 5 (1) of the Framework Agreement between the EC and the Republic of Serbia: "The IPA II beneficiary shall provide for an audit authority which shall be independent from [National IPA Coordinator (NIPAC), National Authorizing Officer (NAO)] management structure and operating structure(s) and be ensured the necessary financial autonomy."

The GAO is acting as the Audit Authority of the IPA Fund and performs the audit activities in accordance with internationally accepted audit standards and EC guidelines.

The functions of the GAO as the Audit Authority include the implementation of duties in accordance with the:

- Framework Agreement between the EC and the Republic of Serbia on the rules on cooperation regarding the financial aid of the EC to the Republic of Serbia for IPA I and IPA II,
- Financing Agreement between the Government of the Republic of Serbia and EC
- Regulation (EU) No. 231/2014 of the European Parliament and of the Council of 11 March 2014 establishing an Instrument for Pre-Accession Assistance (IPA II),
- Regulation (EU) No. 236/2014 of the European Parliament and of the Council of 11 March 2014 laying down common rules and procedures for the implementation of the Union's instruments for financing external action,
- Council Regulation (EC, Euratom) No. 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests,
- Council Regulation (Euratom, EC) No. 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission to protect the European Communities' financial interests against fraud and other irregularities.

Development of the capacities to perform an effective and efficient audit of the EU funds control system has been recognised as one of the measures in the Public Financial Management Reform Programme (PFM RP) 2021-2025. Measure 3.1 of the PFM RP envisages the

establishment of a base for strengthening the institutional and administrative capacity of the GAO to enable the effective audit of the EU control system.

The following three activities were set under the measure:

- Strengthening the legislative framework for the re-institutionalisation of the GAO – adoption and implementation of a new legal basis;
- Developing a staff retention policy to ensure the adequate capacity of the GAO; and
- Strengthening the capacity of the GAO to ensure an effective system of control and audit of EU funds in line with the EU legislative framework.

However, after the verification mission of the structure and authority established by the Republic of Serbia, the auditors of the European Commission, in their Audit Reports, underlined that the GAO should provide and maintain sufficient administrative capacities, to ensure the effective protection of EU financial interests, as well as more coordinated management of irregularities, prevention and detection of errors and fraud, both within EU funds and within national funds.

Furthermore, under the adopted NPAA 2022-2025 GAO envisaged measure “Strengthening the institutional structure and administrative capacities of the GAO in order to ensure an efficient system control and audit of EU funds in accordance with the legislation within the framework of the EU”.

As a result, the strengthening of the capacity for implementation of the EU acquis in a manner that safeguards the protection of the EU's financial interest in the upcoming period depends upon the timely determination of the adequate institutional set-up functionally independent from the auditees, assessment of workload required before and after the date of accession, and appropriate legal basis for re-institutionalization of GAO.

To that end, expert assistance is needed to provide a detailed assessment of the current gaps in the legal and administrative set-up for full implementation of the Union acquis relevant to the protection of the EU's financial interests with comparative analysis, a proposed adequate legal basis for the new institutional set-up and the best organisational structure, including a workload analysis for the auditing of the EU funds with different scenarios depending on the established structure.

At present, there are no ongoing 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 assistance to the GAO in order to strengthen the institutional structure of the GAO to ensure an effective and efficient system of control and audit of the EU funds in accordance with the EU legislative framework with regard to the protection of the EU's financial interest.

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

- Based on the documents and legislation received, the expert will prepare a legal and administrative capacity gap assessment with a comparative analysis of the legal grounds for the setting up of an audit authority (AA) and its functions in peer EU Member States in the context of the implementation of EU Funds in accordance with relevant EU legislative requirements governing the protection of the EU's financial interest;
- Advise on amendments to the existing legal framework needed for the re-institutionalisation of the GAO and propose a new institutional and administrative set-up of the GAO aligned

with responsibilities to carry out an audit in accordance with the relevant Union acquis and to protect the EU's financial interest stemming from Chapter 32;

- Deliver workload analyses of the audit authority's functions of the GAO based on needs stemming from current IPA requirements, and the post-accession requirements for the auditing of the EU funds with recommendations on the adequate staff retention policy;
- Hold a workshop presenting the above outputs of the assignment.

3.2 Requested services

The Senior NKE regarding the activity “Strengthening the institutional structure of the GAO” is expected to provide the following services:

1. Legal and administrative capacity gap assessment for the implementation of the Union acquis relevant to the protection of the EU's financial interests by the GAO with comparative analysis of the audit authority's institutional set-up and their functions in peer EU Member States;
2. Provide advice on amendments to the existing legislative framework needed for re-institutionalisation GAO and propose an appropriate institutional and administrative set-up of the GAO needed to carry out audit responsibilities in compliance with relevant EU Funds acquis and requirements stemming from Chapter 32 without violating the integrity of the existing functions and bodies for the implementation of the EU Funds;
3. Workload analysis of the GAO administrative capacity needs to carry out audit functions in compliance with current IPA system requirements;
4. Workload analysis to meet upcoming requirements and instructions for the auditing of the EU funds control system upon accession to the EU according to different scenarios (depending on the number of programmes and structures for their management and control) with retention policy recommendations;
5. Prepare and hold a Workshop and present the outputs of the assignment.

3.3 Outputs

The Senior NKE is expected to deliver the following outputs:

1. A legal and administrative capacity gap assessment, with a comparative analysis of the institutional set-up and the functions of the AA in the selected peer Member State drafted;
2. Advice on amendments to the existing legislative framework needed for re-institutionalisation of the GAO and proposal of the new GAO institutional and administrative set-up (organisational structure) needed to carry-out audit responsibilities in compliance with relevant EU Funds acquis and requirements stemming from Chapter 32 drafted;
3. Two workload analyses of the GAO administrative capacity needs to carry out audit functions in compliance with IPA and post-accession requirements, respectively, with retention policy recommendations drafted;
4. Workshop held.

3.4 Reporting

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

- A Final Mission Report, no later than 1 week after the completion of tasks under this assignment. This report will include a 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: TL and/or KE2.

Submission of reports:

- A Final 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 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.

For each of the short-term missions, the timing and duration shall be agreed upon with the Beneficiary and the PLAC III team prior to each planned mission.

3.6 Expert input

3.6.1 Total working days

40 working days (WDs) in total have been planned for the 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 through several missions during the period from January until December 2023. However, the starting date will be confirmed at a later stage.

3.6.3 Location/place of assignment

The SNKE must deliver 100% of the input in Serbia, unless otherwise agreed due to extraordinary circumstances (i.e., COVID-19). All home-based days are subject to 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 (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, economics or similar, relevant to the assignment;
- Computer literacy;
- Proficiency in report drafting;
- Excellent communication and analytical skills;
- Proficiency in the English language;
- Independence and freedom 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 related to the EU *acquis*, gained in an EU Member State, a candidate or a potential candidate country

4.3 Specific professional experience (50 points)

- At least 3 (three) preferably 5 (five) years of postgraduate professional experience in relation to EU *acquis* in the field related to setting up of audit and protection of the EU's financial interest related to the Cohesion Policy;
- 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 9 December 2022, 17:00 hrs., titled:

“Application for the position – Senior NKE in the area of EU Negotiating Ch. 32 – Financial Control - development of institutional set-up for audit and protection of the EU's financial interest.”

References must be available on request. Only short-listed candidates will be contacted.

Pre-selected experts will be requested to sign a Statement of Availability (SoA) in which they acknowledge and confirm their 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 the Project Manager at DMI Associates Marion Bayard: mail to mbayard@dmiassociates.com or Arianne Khani: mail to akhani@dmiassociates.com.

6. Disclaimer

The implementation of the requested technical assistance and the start of the short-term assignment is subject to the signing and entry into force of the addendum to Service Contract No. (CRIS) 2018/404-529 between the Contracting Authority and the Contractor on the extension of the period of implementation of the tasks of the Policy and Legal Advice Centre (PLAC III) project under IPA 2021 framework.