

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. 1, Free movement of goods - Draft Law on Plant Nutrition and Soil Improvers
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
Target Beneficiaries:	Negotiating Group Ch. 1; Ministry of Economy, Ministry of Agriculture, Forestry and Water Management
Budget Line/Expert Category:	One Senior Non-Key Expert
Duration of the assignment:	35 working days, from April 2023 until October 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 Union *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 1, Free movement of goods

The free movement of goods is one of the four fundamental freedoms of the single market of the European Union.

The free movement of goods ensures that products can be placed on a single market and traded freely across the EU based on common rules and procedures. Removing barriers to trade is achieved by the harmonisation of technical regulations, while ensuring a high level of safety of life and health, protection of animals and plants, environmental protection, consumer protection etc.

Where products are governed by national rules, i.e. absent the harmonised rules at the EU level, the principle of the free movement of goods prevents these creating unjustified barriers to trade (Arts. 34-36 of the Treaty of the Functioning of the European Union).

The harmonised European product legislation, which needs to be transposed or complied with by each Member State, represents the largest part of the *acquis* under this chapter. It is based on the “old approach” (imposing precise product specifications) and the “new and global approach” (imposing general product requirements).

The “old approach” product legislation covers, among other products, fertilisers.

The Serbian Law on plant nutrition and soil improvers ("Official Gazette of RS" No. 41/09 and 17/19) is the legal basis for the adoption of technical regulations for fertilisers in Serbia.

Serbian legislation in the area of fertilisers is fully aligned with Regulation (EC) No. 2003/2003 relating to fertilisers (repealed by Regulation (EU) 2019/1009) and with Regulation (EC) No 1069/2009 laying down health rules as regards animal by-products and derived products not intended for human consumption and repealing Regulation (EC) No 1774/2002 (EU Animal by-products Regulation).

Types of fertilisers (organic, organic-inorganic, microbiological, other types of fertilisers and special products such as amino acids, humic acids, etc.) which are not covered by Regulation (EC) No. 2003/2003 and Regulation (EC) No 1069/2009 are regulated by the national rules subject to the principle of the free movement of goods.

Regarding the process of negotiations within Chapter 1 – Free movement of goods, the Republic of Serbia is obliged to provide 2 benchmarks in order to open negotiations in this chapter. After explanatory and bilateral meetings held in June and September 2014, the European Commission submitted a Report on a performed screening for Chapter 1 - Free movement of goods. The opening of the chapter could be envisaged once the following benchmarks are met:

Benchmark 1: Serbia shall provide the Commission with an action plan for compliance with Articles 34-36 TFEU, including milestones for the internal screening of domestic legislation and administrative practices, and for the introduction of mutual recognition clauses, and for the necessary subsequent amendments or changes;

Benchmark 2: Serbia shall present to the Commission a strategy and an action plan with milestones for the implementation of the EU legislation in this chapter. These should cover both the vertical (New Approach and Old Approach) and horizontal legislation and the relevant horizontal institutions (standardisation, accreditation, metrology, and market surveillance). They should also set out how and by when Serbia will remove barriers to trade with regard to products covered by this chapter, notably additional border controls. They should define clear responsibilities for introducing and effectively implementing legislative measures and for ensuring administrative capacity.

The official opening of negotiations is subject to the prior assessment of the candidate country's preparedness, which is assessed by the EU. In particular, the level of preparedness is assessed through analysis of the legislation in force.

The latest versions of the abovementioned strategic documents have been provided to the Commission in November 2022. The Commission's answer is expected in the first quarter of 2023.

The new Regulation (EU) 2019/1009 laying down rules on the making available on the market of EU fertilising products, amending Regulations (EC) No 1069/2009 and (EC) No 1107/2009 and repealing Regulation (EC) No 2003/2003 (new EU Fertilising Products Regulation) introduces significant and important changes in the field of fertilisers.

As a result, expert support is needed to assist the Phytosanitary Directorate (PD) of the Ministry of Agriculture, Forestry and Water Management (MAFWM) and the Negotiating Group for Ch. 1 in the preparation of a detailed legal gap assessment of the legislative framework on fertilisers in Serbia against the requirements of the new EU Fertilising Products Regulation as well as in the preparation of a draft Law on Plant Nutrition and Soil Improvers fully aligned with the new Fertilising Products Regulation.

There are no ongoing or planned assistance projects regarding the activity covered by this ToR.

3. Description of the assignment:

3.1 Specific objectives

The specific objective of this assignment is to assist the Phytosanitary Directorate (PD) of the Ministry of Agriculture, Forestry and Water Management (MAFWM) in the preparation of detailed legal gap assessments of the legislative framework on fertilisers products and preparation of a draft Law on Plant Nutrition Products and Soil Improvers fully aligned with the new EU Fertilising Product Regulation (except provisions which are not possible transpose into national legislation at the moment) including its amendments, as well as align with EU Animal by-products Regulation as amended by Regulation (EU) 2019/1009.

In the scope of this objective the selected expert support is needed for the following activities:

- a. Assistance to the PD of the MAFWM in conducting an assessment of legal gaps in the national legislation in force compared to the legal requirements of the relevant EU legislation governing fertiliser products;
- b. Assistance to the PD of the MAFWM in drafting the new Law on Plant Nutrition Products and Soil Improvers fully aligned with the new EU Fertilising Product Regulation (as last time amended by Commission Regulation (EU) 2022/1519 of 5 May 2022) and EU Animal by-products Regulation as amended by the new EU Fertilising Product Regulation;
- c. Assistance to the PD of the MAFWM in preparation of tables of concordance for the new draft Law on Plant Nutrition Products and Soil Improvers aligned with the new EU Fertilising Product Regulation as last time amended by Commission Regulation (EU) 2022/1519 of 5 May 2022 and EU Animal by-products Regulation as amended by the new EU Fertilising Product Regulation;
- d. Hold a workshop/training presenting the results of the legal gap assessment and the new draft Law on Plant Nutrition Products and Soil Improvers.

3.2 Requested services

The Senior NKE in the area of fertilisers is expected to provide the following services:

1. Assist the PD of the MAFWM in preparation of the detailed legal gap assessment report providing information and data for national legislation in force compared to the legal requirements of the relevant EU legislation governing fertilisers;
2. Assist the PD of the MAFWM in drafting the new Law on Plant Nutrition Products and Soil Improvers aligned with the new EU Fertilising Product Regulation (as last time amended by Commission Regulation (EU) 2022/1519) and EU Animal by-products Regulation as amended by the new EU Fertilising Product Regulation;
3. Assist the PD of the MAFWM in preparation of tables of concordance for the new draft Law on Plant Nutrition Products and Soil Improvers fully aligned with the new EU Fertilising Product Regulation (as last time amended by Commission Regulation (EU) 2022/1519) and EU Animal by-products Regulation as the new EU Fertilising Product Regulation;
4. Prepare and hold a workshop/training presenting the legal gap assessment report and the new draft Law on Plant Nutrition Products and Soil Improvers.

3.3 Outputs

The Senior NKE is expected to deliver the following outputs:

1. The legal gap assessment report, drafted;
2. The new Law on Plant Nutrition Products and Soil Improvers, drafted;
3. Tables of concordances for the new draft Law on Plant Nutrition Products and Soil Improvers aligned with the new EU Fertilising Product Regulation (as last time amended by Commission Regulation (EU) 2022/1519) and Regulation (EC) No 1069/2009 as amended by the new EU Fertilising Product Regulation, drafted;
4. Workshop/training 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

35 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 April 2023 until September 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 (35 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 in fields such as law, chemical engineering or agronomy engineering, technical field 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 Union acquis in the field of free movement of goods, 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 drafting and/or implementing legislation in relation to Union acquis in the free movement of goods sector;
- Knowledge of the Serbian legal system 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 akhani@dmiassociates.com no later than 27 March 2023, 17:00 hrs, titled:

“Application for the position – Senior NKE in the area of Ch. 1 (Free Movement of Goods), Draft Law on Plant Nutrition Products and Soil Improvers”

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: mbayard@dmiassociates.com or Arianne Khani: akhani@dmiassociates.com.