

Policy and Legal Advice Centre (PLAC III)

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

Technical assistance requested:	2 (two) Senior Non-Key Experts in the area of Negotiating Ch. 8, Antitrust and Mergers – Horizontal Block Exemption
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. 8; Commission for Protection of Competition of the Republic of Serbia
Budget Line/Expert Category:	Senior Non-Key Experts
Duration of the assignment:	40 SNKE working days (WDs), from July 2023 to January 2024

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 the 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 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 8 - Competition Policy

Negotiation Chapter 8 - Competition policy covers the fields of anti-trust and mergers, State aid control and liberalisation. The *acquis* under this chapter includes, *inter alia*, rules and procedures to fight anti-competitive practices of market participants and to prevent governments from granting State aid which distorts competition in the internal market. It is directly linked with Serbia's obligations under Article 73 of the Stabilisation and Association Agreement signed between the EU and Serbia (SAA), presently in force.

Analytical review and conformity assessment of the Serbian competition legislation with the EU *acquis* has been performed during explanatory and bilateral screening meetings for Chapter 8 in 2014. As a result of those meetings, the Screening report was issued in November 2015 and the results of the screening were delivered to the Republic of Serbia in February 2016. According to the results, Serbia had to fulfil 6 benchmarks in the state aid field in order to open negotiations under this Chapter. No opening benchmarks in the field of antitrust and mergers were envisaged.

In accordance with Article 73 of the SAA, Serbia has largely transposed the Union *acquis* in the competition field and provided for effective means of enforcing such rules, by establishing an operationally independent authority – the Commission for Protection of Competition (CPC).

The CPC, as the main competent authority in charge of competition protection in the Serbian market, was established by law in 2005. Over the years, the CPC has developed its administrative and institutional capacities, which resulted in positive remarks in the EC Progress Reports for Serbia.

According to the appraisal from the Screening Report of the EC for Chapter 8 from 2015, the main body of competition rules, found in the primary competition legislation – the Law on Protection of Competition ("Official Gazette of the RS", no. 51/2009 and 95/2013) and secondary competition legislation, represented by various regulations proposed by the CPC and adopted by the Serbian Government, is broadly aligned with the EU *acquis*.

The country progress report of the European Commission (EC) for Serbia for 2022 (Serbia 2022 Progress Report), published on 12 October 2022, confirms that the legislative framework in the field of competition (antitrust and mergers) is broadly aligned with the relevant *acquis* (Articles 101 and 102 of the Treaty on the Functioning of the EU) and the related provisions of the SAA. At the same time, it identifies that, *inter alia*, "...the legislative framework is yet to be fully brought in line with EU guidelines and communications in this area."

In the process of further harmonisation of the national competition legislation with the *acquis*, the CPC had already drafted proposals of three regulations on block exemption of certain categories of agreements and submitted them to the Government for adoption. Those three draft regulations are as follows:

1. Draft Regulation on agreements on the repair and maintenance of motor vehicles and agreements on the distribution of spare parts for motor vehicles exempt from prohibition;
2. Draft Regulation on technology transfer agreements exempt from prohibition;
3. Draft Regulation on agreements between undertakings operating in the rail and road transport market exempt from prohibition.

Since the Union *acquis* is a dynamic category, the CPC continuously monitors changes in the relevant EU legislation, i.e. new pieces of the *acquis*, as well as the process of evaluation by

the European Commission (EC) of legislation which is still in force. This is the case with two EC Horizontal Block Exemption Regulations (HBERs), which are very important in the competition field and were set to expire toward the end of 2022 (31st December 2022), but were initially extended until 30th June 2023:

- Commission Regulation (EU) No. 1217/2010 of 14 December 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of research and development agreements (HBER on R&D agreements) and
- Commission Regulation (EU) No. 1218/2010 of 14 December 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of specialisation agreements (HBER on specialisation agreements)

which are accompanied by the 2011 Commission Guidelines on horizontal cooperation agreements.

The CPC had drafted two national regulations reflecting 2010 HBERs, which had been adopted by the Serbian Government in 2010 and are still in force, the Regulation on specialisation agreements between undertakings operating on the same level of production or distribution chain exempt from prohibition (“Official Gazette of the RS”, no. 11/2010) and the Regulation on research and development agreements between undertakings operating on the same level of production or distribution chain exempt from prohibition (“Official Gazette of the RS”, no. 11/2010).

However, in line with developments at the EU level, in particular, the adoption of the revised HBERs by the EC on June 1, 2023, which will become effective in the EU starting July 1, 2023, and the new 2023 Guidelines for the assessment of horizontal cooperation agreements, it has become necessary to introduce new regulations in the Serbian legal system, which would replace the regulations from 2010, along with accompanying guidelines.

To that end, expert assistance is needed in order to assist the CPC and fast-track the process of producing the relevant new draft regulations, as well as draft guidelines reflecting the solutions at the EU level, i.e. the revised HBER on R&D agreements (Commission Regulation (EU) 2023/1066), revised HBER on specialisation agreements (Commission Regulation (EU) 2023/1067) and the revised Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to cooperation agreements between competitors (Revised Horizontal Guidelines), with accompanying documents, such as explanatory notes and tables of concordance.

There is no ongoing technical assistance for this area.

3. Description of the assignment:

3.1 Specific objectives

The specific objective of this assignment would be to provide in-person assistance to the CPC in the process of drafting the new national horizontal block exemption regulations, along with accompanying guidelines, which would reflect the following:

- Commission Regulation (EU) 2023/1066 of 1 June 2023 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of research and development agreement (revised HBER on R&D agreements);
- Commission Regulation (EU) 2023/1067 of 1 June 2023 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of specialisation agreements (revised HBER on specialisation agreements); and
- Revised Horizontal Guidelines.

While the CPC has its own legal service, the assistance of the experts is expected in order to enhance and fast-track the process of drafting the new national legislation in compliance with the revised HBERs and Guidelines.

3.2 Requested services

3.2.1 The Senior NKE in the area of R&D agreements (SNKE 1 – 20 WDs) is expected to provide the following services:

In cooperation with the CPC:

- a. Produce a draft of the new regulation on the block exemption of research and development agreements in compliance with the revised HBER on R&D agreements;
- b. Produce a draft of necessary accompanying documents, such as an explanatory note and table of concordance (to be agreed with the CPC);
- c. Produce draft CPC Guidelines regarding certain categories of R&D agreements, which would be applicable in the Serbian legal system;
- d. Produce draft CPC Guidelines on categories of horizontal cooperation agreements outside R&D and specialisation agreements, which would be applicable in the Serbian legal system in collaboration with SNKE 2;
- e. Training for the CPC staff to present the outputs of the activity in collaboration with SNKE 2.

3.2.2 The Senior NKE in the area of specialisation agreements (SNKE 2 – 20 WDs) is expected to provide the following services:

In cooperation with the CPC:

- a. Produce a draft of the new regulation on the block exemption of specialisation agreements in compliance with the revised HBER on specialisation agreements;
- b. Produce a draft of necessary accompanying documents, such as an explanatory note and table of concordance (to be agreed with the CPC);
- c. Produce draft CPC Guidelines regarding certain categories of specialisation agreements, which would be applicable in the Serbian legal system;
- d. Produce draft CPC Guidelines on certain categories of horizontal cooperation agreements outside R&D and specialisation agreements, which would be applicable in the Serbian legal system in collaboration with SNKE 1;
- e. Training for the CPC staff to present the outputs of the activity in collaboration with SNKE 1.

3.3 Outputs

3.3.1 SNKE 1 is expected to deliver the following outputs:

1. A draft of a regulation on the block exemption of R&D agreements, drafted;
2. An explanatory note to the draft regulation and table of concordance, drafted;

3. A draft of CPC guidelines on the block exemption of certain categories of R&D agreements, drafted;
4. A draft of CPC guidelines on categories of horizontal cooperation agreements outside R&D and specialisation agreements, drafted (in collaboration with the SNKE 2);
5. Training held (in collaboration with SNKE 2).

3.3.2 SNKE 2 is expected to deliver the following outputs:

1. A draft of a regulation on the block exemption of specialisation agreement, drafted;
2. An explanatory note to the draft regulation and table of concordance, drafted;
3. A draft of CPC guidelines on block exemption of certain categories of specialisation agreement, drafted;
4. A draft of CPC guidelines on categories of horizontal cooperation agreements outside R&D and specialisation agreements, drafted (in collaboration with SNKE 1);
5. Training held (in collaboration with SNKE 1).

3.4 Reporting

The Senior NKEs 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 SNKEs 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 SNKEs 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 NKEs shall work under the guidance and follow the instructions of the Team Leader. The NKEs 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 Experts for this assignment (20 WDs for SNKE 1 and 20 WDs for SNKE 2).

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 July 2023 until January 2024. However, the starting date will be confirmed at a later stage.

3.6.3 Location/place of assignment

The SNKEs 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 NKE1 and Senior NKE2:

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 (first degree/master's) in law, with preferable specialization and/or proficiency in EU competition law;
- 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, gained in an EU Member State, a candidate or a potential candidate country.

4.3 Specific professional experience (50 points)

- Civil servant/case-handler/competition practitioner with at least 6 years of work experience in drafting legal acts in the area of competition acquis gained in an EU Member State, a candidate or a potential candidate country;
- Experience in practical implementation and enforcement of the competition acquis 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 akhani@dmiassociates.com no later than by 17 July 2023, 17:00 hrs, titled:

“Application for the position – Senior NKEs in the area of Competition Policy Ch. 8, Antitrust and Mergers - Horizontal Block Exemption”.

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.