



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 Services; Harmonisation of Serbian legislation with Directive 2014/65/EU on markets in financial instruments (MIFID II) and Regulation (EU) No 600/2014 on markets in financial instruments (MiFIR)

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 and Central securities depository and clearing house, Belgrade Stock Exchange

Budget Line /Expert Category: Senior Non-Key Expert

Duration of the assignment: 35 working days (WD), to be spent in the period January 2021 – June 2021

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 Union *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 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, which means that it has reached a satisfactory level of alignment for securities markets and investment services to open negotiations and that 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 European Union (EU) has encouraged Serbia to continue the process of alignment with the *acquis* and its effective implementation and enforcement.

Moreover, the EU progress report on Serbia for 2020 states that Serbia is moderately prepared in the area of financial services. Good progress was made on further implementing international standards. The chapter was opened in the EU accession negotiations in June 2019. Last year's recommendations were largely fulfilled.

Furthermore, the EU Common Position for Chapter 9: Financial services states that: "The EU emphasises that Serbia needs to take steps towards full alignment with the *acquis* for markets in financial instruments (MiFID) by transposing related implementing Directives and Regulations. In addition, Serbia will need to align with the evolving MiFID framework under Directive 2014/65/EU (MiFID II), Regulation (EU) No. 600/2014 (MiFIR) and their implementing acts."

Also, as a result of PLAC Project amendments to the Capital Market Law (CML) were drafted implementing MIFID II. However, in order to ensure successful implementation of the CML, the Project provided recommendation to incorporate Delegated acts, Implementing and Regulatory Technical Standards and European Securities and Markets Authority (ESMA) guidelines where applicable in national legislation.

Considering the complexity of the issue, the relevant target beneficiaries would highly benefit from the expert assistance in drafting of amendments to the relevant bylaws and in drafting of new bylaws in accordance with the CML, which will incorporate specific EU acts (Level 2 and Level 3 legislative acts based on MiFID II and MiFIR - Delegated acts (DA), Regulatory technical standards (RTS), Implementing technical standards (ITS) and ESMA guidelines) into Serbian legislation.

The result of the previous PLAC III project activity was an Action Plan that specifies which Level 2 and Level 3 acts (DA, RTS, ITS and ESMA guidelines) need to be transposed into Securities Commission of the Republic of Serbia's (SEC) rulebooks (bylaws) in order to fully implement MiFID II and MiFIR. This Action Plan contains a list of SEC bylaws that need to be drafted in accordance with the CML (with a reference to specific EU acts), priority areas for transposition and major gaps between MiFID II and MiFIR and the relevant Serbian legislation. Therefore, this assignment represents an extension of the previous PLAC III project activity and is aimed on the realisation of mentioned Action Plan and finalisation of the alignment process with MiFID II and MiFIR, i.e. incorporation of relevant Level 2 and Level 3 legislative acts.

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

3. Description of the assignment:

3.1 Specific objective

The specific objective of this assignment is to provide expert assistance to the beneficiaries to incorporate Delegated acts, Implementing and Regulatory Technical Standards and ESMA guidelines necessary for implementation of MiFID II and MiFIR into domestic legislation, in particular drafting of amendments to the relevant bylaws and drafting of new bylaws, with the aim to ensure alignment with the Union acquis.

3.2 Requested services

The Senior NKE in the area of capital markets and investment services is expected to provide the following services:

1. Based on the Action Plan for transposition of DA, RTS, ITS and ESMA Guidelines related to MiFID II and MiFIR which is the result of the previous PLAC III project activity, assist the beneficiaries in drafting of the amendments to the relevant Serbian rulebooks/bylaws and in drafting of new rulebooks/bylaws in accordance with the CML.
2. To organise and hold a workshop for the target beneficiaries, in particularly the SEC employees, in charge of implementation of the drafted amended and new bylaws.

3.3 Outputs

Senior NKE is expected to deliver the following outputs:

1. Amendments to the existing SEC Rulebooks and new Rulebooks (in accordance with the Action Plan for transposition of DA, RTS, ITS and ESMA Guidelines related to MiFID II and MiFIR) drafted:
 1. Rulebook on licensing investment firms;
 2. Rulebook on organisational requirements for the provision of investment services and performance of investment activities and ancillary services;
 3. Rulebook on rules of conduct for investment firms when providing investment services;

4. Rulebook on licensing and operating requirements for market operators and operators of Multilateral trading facilities (MTFs) and Organised trading facilities (OTFs);
5. Rulebook on approvals for acquisition of qualifying holdings in market operators, investment firms and Central Securities Depository and Clearing House (CSDCH);
6. Rulebook on approval for appointment of directors of market operator, investment firm, CSDCH and data reporting service providers;
7. Rulebook on authorisation, organisational requirements and the publication of transactions for data reporting services;
8. Rulebook on transparency for trading venues, systematic internalisers and investment firms trading over the counter (OTC) (Art. 23 to 28 Rulebook on licensing and operating requirements for market operators);
9. Rulebook on supervision and product intervention powers exercised by Securities Commission;
10. Rulebook on criteria and procedure for the adoption of an equivalence decision;
11. Rulebook on clarification of certain terms related to derivative instruments.

2. A workshop held.

3.4 Reporting

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

- **Final Mission Report**, no later than 1 week after completion of tasks under this assignment. This report will include description of all activities and outputs provided by the SNKE in the context of this assignment.

- A brief interim report - only upon a request of the PLAC III team: 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 at 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 a review, comments and the 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.

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

35 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 from January 2021 – June 2021. 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 Belgrade, Serbia, unless otherwise agreed due to extraordinary circumstances (i.e. COVID-19). All 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. 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 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 responsibilities they take on

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, candidate or potential candidate country.

4.3 Specific professional experience (50 points)

- At least 5 years of postgraduate professional experience in an EU member state or candidate country related to harmonisation of the national Capital Market and Investment Services legislation with the Union Capital Market and Investment Services acquis.
- Postgraduate professional experience in a Capital Market and Investment Services regulatory authority of an EU member state or candidate country will be advantage.
- Previous professional experience and/or 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 ehoward@dmiassociates.com and mbunga@dmiassociates.com no later than 18 December 2020, 17:00 hrs, titled:

“Application for the position - Senior NKE in the area of Ch. 9, Harmonisation of Serbian legislation with Directive 2014/65/EU on markets in financial instruments (MIFID II) and Regulation (EU) No 600/2014”

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: Elizabeth Howard, mailto: ehoward@dmiassociates.com or Mareva Bunga mailto: mbunga@dmiassociates.com

