

ANNEX II: TERMS OF REFERENCE

POLICY AND LEGAL ADVICE CENTRE (PLAC) FOR MONTENEGRO

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1. BACKGROUND INFORMATION

1.1. Partner country

Montenegro

1.2. Contracting authority

European Union, represented by the European Union Delegation to Montenegro

1.3. Country background

On 15 October 2007 Montenegro signed a [Stabilisation and Association Agreement \(SAA\)](#) and an [Interim Agreement on trade and trade-related issues](#). The latter entered into force on 1 January 2008 while the SAA entered into force on 1 May 2010.

By the act of signing the Stabilisation and Association Agreement, Montenegro formally agreed an association with the European Community and its Member States, thereby accepting responsibility for its European future. The Agreement was unanimously supported by all parliamentary parties and ratified in the Parliament of Montenegro on 13 November 2007. The consent to the Agreement was given by the European Parliament on 13 December 2007. The Interim Agreement allows Montenegro and the EU to benefit from the trade parts of the Stabilisation and Association Agreement while the agreement itself is still being ratified. The Montenegrin government adopted an action plan for its implementation on 17th May 2007. The Interim Agreement entered into force on 1 January 2008. The Interim Committee, which is responsible for ensuring that the Interim Agreement runs smoothly, held its inaugural session on 22 January 2008.

Diplomatic relations between Montenegro and the European Union are conducted through the Mission of Montenegro to the EU in Brussels, which has been fully functional since 2006, and the EU Delegation to Montenegro in Podgorica, which opened in November 2007.

Montenegro applied for EU membership in December 2008 and was granted candidate status in December 2010. On 29 June 2012, following the endorsement by the European Council, the accession negotiations with Montenegro were opened, marking the start of a more intensive phase in the accession process. The negotiating framework with Montenegro incorporates the new approach to negotiations on the chapters on judiciary and fundamental rights, and on justice, freedom and security. The screening process was completed in May 2014, when the last screening report was processed by the Council. Montenegro's efforts in the context of accession negotiations will have to focus on fully meeting the political and economic Copenhagen criteria for EU membership, as well as the ability to assume the EU *acquis*.

Presently, 33 out of 35 chapters (meaning all screened chapters)¹ have already been opened and 3 have been provisionally closed (Chapters 25 - Science and research), 26 - Education and culture and 30 - External relations). After the opening of the last chapter in June 2020, the priority for further overall progress in the accession negotiations, and before moving towards the provisional closure of other chapters, remains the fulfilment of the rule of law interim benchmarks set under chapters 23 and 24.

The Council of the European Union endorsed, on 25 March 2020, the Commission Communication on "Enhancing the accession process - A credible EU perspective for the Western Balkans" of 5 February 2020, aiming to reinvigorate the accession process by making it more predictable, more credible, more dynamic and subject to stronger political steering, based on objective criteria and rigorous positive and negative conditionality, and reversibility. On the same occasion, it reiterated that the fundamental democratic, rule of law and economic reforms represent the core objective of the accession process. On 6 May 2021, Council of the European Union adopted revised enlargement methodology to the accession negotiations with Montenegro and Serbia. The new methodology stresses focus on the following elements: a stronger focus on the fundamental reforms; a stronger political steer; an increased dynamism; and the predictability of the process, based on objective criteria and rigorous positive and negative conditionality. It places even stronger focus on reforms in the rule of law, fundamental rights, the functioning of democratic institutions and public administration reform, as well as economic criteria.

The negotiating frameworks with Montenegro and Serbia already foresee for chapters 23 (Judiciary and fundamental rights) and 24 (Justice, freedom and security) to be tackled early in the

¹ Chapter 34 – Institutions and 35 – Other issues are not currently the subject of national programme of accession, since they will be dealt with at the very end of the negotiations.

negotiations to allow for sufficient time for the necessary reforms before the negotiations are closed. They also envisage that where problems arise in the course of negotiations under these chapters, the Commission may propose updated benchmarks throughout the process, including new and amended action plans, or other corrective measures, as appropriate. In line with the revised methodology: No further chapters will be closed before the interim benchmarks for chapters 23 and 24 are met; Once the interim benchmarks for chapters 23 and 24 have been met and closing benchmarks set, the rule of law action plans will need to be updated. The two rule of law chapters should be closed last; The Intergovernmental Conferences focus on all relevant aspects of the fundamentals cluster to provide political attention and visibility on key reforms, whether rule of law, public administration reform, functioning of democratic institutions or the economic criteria, as well as chapters 5 (Public procurement), 18 (Statistics) and 32 (Financial control); Anti-corruption work will be mainstreamed through a strong focus in relevant chapters. A chapter will not be provisionally closed before sufficient anti-corruption policies in that specific chapter are being implemented; Corrective measures will be considered in case of problems occurring in the course of negotiations, also in line with the principle of the reversibility of the process foreseen by the enhanced methodology.

Within the negotiations, some areas have a particular weight given the volume of the acquis and the specificities of national legislation and systems. As further underlined with the EC Enlargement Strategy as well as with the Indicative Strategy Paper for Montenegro (the EC Strategy Paper concerning notably allocation of IPA II assistance towards the accession priority areas), the rule of law will remain at the heart of the enlargement process. Montenegro will have to sustain the momentum of reforms over time in the key areas of the rule of law, particularly judicial reform and anti-corruption policy, independence of key institutions, freedom of expression, anti-discrimination policy, the protection of minorities, and develop a solid track record of reform implementation. Likewise, the impact of the global economic crisis and COVID-19 pandemic has revealed the need for all countries to strengthen their economic governance, improve competitiveness, and create a more stable and transparent business environment to attract investments and stimulate growth. The enlargement strategy sets out proposals to support this, including enhancement of economic policy and its governance through the introduction of national economic reform programmes, action plans for public financial management and competitiveness and growth programmes. A necessity is also recognized for continuous strengthening of democratic institutions and for making democratic processes more inclusive. Further progress with public administration reform and a stronger role for civil society are crucial in this respect.

In view of the above, the Ministry of European Affairs – MEA (former European Integration Office - EIO) carries out state administration affairs and related professional tasks regarding coordination, monitoring and reporting on the process of joining and accession to the European Union; coordination of operations of bodies established for the purpose of negotiations; providing assistance to ministries and special organizations in aligning the regulations with EU regulations; providing analytical support and directing the work of the Negotiating Team for Accession of Montenegro to the EU; issuing mandatory instructions to the Negotiating Team, in accordance with the policy of the Government; establishing and developing a system for the use of structural and cohesion funds of the European Union; managing the operational structure and the national body for Cross-Border Cooperation and Transnational Cooperation Programmes; monitoring the fulfilment of obligations that the ministries and special organizations have undertaken in joining and accession to the European Union; coordination of preparation of the national version of the EU acquis, and translation of Montenegrin legislation into one of the official languages of the European Union; informing the public on and promoting activities in the process of joining and accession to the European Union, and the use of international development assistance, including IPA funds.

The MEA coordinates and monitors the implementation of the Stabilization and Association Agreement and is responsible for preparing, coordinating and monitoring the implementation of the National Programme for transposition of the acquis.

The MEA cooperates with the Mission of Montenegro to the European Union in the process of joining and accession to the European Union, as well as with the Ministry of Foreign Affairs and other competent state administration bodies.

The task of the Negotiating Team, headed by the Deputy Prime Minister and Minister of European Affairs, is to negotiate Montenegro's accession to the EU, cooperate with negotiating groups and coordinate the drafting of negotiating positions, define negotiating strategies and coordinate the work of the negotiating groups and all institutions involved in the accession negotiations. The Team receives guidelines and instructions from the MEA.

1.4. Current situation in the sector

As part of the negotiations with Montenegro in 2012, the EU introduced a new methodology of negotiations, which also applies to Serbia. Emphasis is placed on Chapter 23 "Judiciary and fundamental rights" and Chapter 24 "Justice, freedom and security", which should be addressed in the early stages of negotiations to allow maximum time for the adoption of necessary legislation, the establishment of institutions and achievement of satisfactory progress in the implementation process before negotiations are closed. This practically means that the negotiations in these chapters will be led from start to finish of the entire accession negotiations. In addition, the EU Negotiating Framework establishes that an overall balance must be ensured in terms of the progress achieved within each chapter of the negotiations. If progress within these two chapters is far behind compared to the overall advancement of the negotiations, even after implementing all other available measures, the Commission shall, on its own initiative or at the request of one third of the Member States, propose freezing of negotiations until the imbalance in achieved progress has been resolved. Furthermore, the new methodology for EU negotiations in these three chapters provides that the EU may, in addition to setting opening and closing benchmarks in individual chapters, establish interim benchmarks that must be met in order to progress in the negotiations.

The Enlargement Strategy observes that Montenegro has continued to build a satisfactory track record in implementing the obligations of the SAA. The SAA, which entered into force on 1 May 2010, is being implemented in an unhindered manner, to the mutual benefit of the both parties to the Agreement. In order to ensure an uninterrupted implementation of the SAA, Montenegro and the EU have established joint bodies for monitoring the implementation of the Agreement. All meetings of the Committee, line-subcommittees and special working groups were held in accordance with the agreed plan and timetable, as well as Stabilisation and Association Council, SA Parliamentary Committee (SAPC) and the Special Group on Public Administration Reform.

At its 20th session on 2 December 2021, the SAPC unanimously adopted a declaration with recommendations for accelerating Montenegro's progress towards the EU, stressing the imperative for achieving substantial progress in key EU-related reforms, such as the widely anticipated electoral and judicial reforms, which have been stalled. The declaration called for a constructive and inclusive political dialogue between the executive and legislative authorities as well as the commitment of all parties to overcome the current polarised political landscape, strengthen the state institutions, and enhance Montenegro's progress on its EU path.

Montenegro has continued aligning its legislation to the requirements of the EU legislation in many fields and implementing its obligations under the Stabilization and Association Agreement (SAA).

Montenegro's Programme of Accession to the European Union (MPA)² is a strategic document comprising 33 negotiating chapters in a tabular display. It is a plan for the achievement of full internal harmonization of national legislation with the EU acquis, while respecting the requirements and the timetable of the negotiations on the EU accession. As the acquis is constantly changing and evolving, and given the dynamics of the negotiation process, the Programme of Accession is adjusted annually to the changes in the process of developing EU law but also the dynamics of the adoption of national legislative and strategic documents. In addition, it provides an overview of the necessary additional administrative capacities and the assessment of additional financial cost for the application of the regulations. Presently, MPA covers the period 2021-2023.

The government adopts medium-term and annual work programmes. The medium-term work programme of the Government is adopted for a period of up to four years. The starting points for the preparation of the medium-term work programme of the Government are the programme of the Prime Minister adopted by the Parliament, economic policy measures for the medium term and obligations arising from legislation, strategic documents and the process of Montenegro's accession to the European Union. The annual work programme of the Government is adopted by the end of the current year for the next year. The starting points for the preparation of the annual work programme of the Government are the medium-term work programme of the Government and economic policy measures for the current year. It consists of a thematic and normative part. Based on the proposal of the line ministries, the draft medium-term and annual work programme of the Government is prepared by the General Secretariat of the Government and submitted to the Parliament and published on the Government's web portal.

The implementation of the medium-term and annual work programme of the Government is monitored by the General Secretariat of the Government, which prepares reports on their implementation, and submits it to the Government. They are reviewed quarterly. If a Ministry is unable to fulfil the obligations from the annual or medium-term work programme of the Government within the set deadline, it is obliged to timely inform the Government about the reasons and propose a new deadline.

In December 2021, the Government of Montenegro adopted Action plan for addressing 2021 EC Country Report recommendations, which provides Roadmaps for the final criteria for the provisional closure of the following negotiation chapters: 3 - Right of establishment and freedom to provide services, 7 - Intellectual property law, 14 - Transport policy, 15 - Energy, 21 - Trans-European networks, 22 – Regional policy, 27 - Environment and climate change and 33 - Financial and budgetary provisions. The roadmaps have been prepared by the working groups for these chapters, which adequately address the remaining key challenges and obligations from the negotiation process, recommendations from the European Commission's Report on Montenegro for 2021, as well as horizontal links with other chapters and clusters in relation to the revised negotiation methodology. On October 2022, the Commission issued Country report for Montenegro for 2022³.

² <https://www.gov.me/en/documents/0b00010a-937a-4b56-8e87-6cf4a8be0a20>

³ https://ec.europa.eu/commission/presscorner/detail/en/COUNTRY_22_6103

Although 33 negotiation chapters have been opened, gradual closing of negotiation chapters is a process which requires considerable efforts, human and financial resources. Coordination of the accession process, transposition of the EU acquis and implementation of EU policies are present and visible in the administration structure, but it still needs support. While a series of institutional building actions were undertaken within the previous IPA programmes, capacities need to be further built upon including the capacities of line ministries and state agencies.

1.5. Related programmes and other donor activities

The following support was provided in the past within the intervention area to the European Integration Office or its predecessor institutions:

1. IPA 2007 Support to the structures for EU integration and legal harmonisation, Ministry of European Integration, completed;
2. IPA 2008 Project Preparation Facility/Support Measures Facility (PPF/SMF) Support to Capacity Development Programme, Ministry of Foreign Affairs and European Integration, completed;
3. IPA 2012 PPF/SMF Strengthening the capacities for programming and monitoring of IPA II in Montenegro, Ministry of Foreign Affairs and European Integration, completed;
4. IPA 2013 PPF/SMF Strengthening capacities for programming and monitoring of IPA II in Montenegro – UNDP, completed;
5. IPA 2013 PPF/SMF Communicating EU Accession and IPA Assistance, completed;
6. IPA 2014 EU Integration Facility (EUIF) Communicating EU Accession and EU Assistance, ongoing;
7. IPA 2014 EUIF Development of new IT portal for European Affairs, completed;
9. IPA 2014 EUIF Strengthening the capacities of the Montenegrin authorities for the EU accession process and IPA II Instrument, Ministry of European Affairs, completed;
10. IPA 2015 EUIF Support to NIPAC office in monitoring and evaluation of current IPA programmes and preparation for future IPA support.
10. Norwegian bilateral assistance, Strengthening capacities of the Ministry of European Affairs

Other technical assistance projects, twinnings with Member States and TAIEX facility have provided support to various line ministries in legal harmonisation.

Coordination of the EU accession process and preparation for European Structural and Investment (ESI) funds have been supported by assistance of various donors through bilateral arrangements with Norway, Slovenia, Hungary, Germany and other EU member states, while leading organizations were UN agencies and GIZ.

2. OBJECTIVE, PURPOSE & EXPECTED RESULTS

2.1. Overall objective

The overall objective (impact) to which this action contributes is:

Montenegrin administration effectively conducts accession negotiations and successfully manages overall EU integration process geared towards EU membership.

2.2. Specific objective(s)

The specific objectives (outcomes) of this contract is as follows:

- **OUTCOME 1: *Enhanced compatibility of national legislation with EU legislation and its effective implementation*** through fostering the process of accession negotiations of Montenegro by supporting the effective alignment of national legislation with the acquis and its implementation and

- **OUTCOME 2: *Enhanced capacities of relevant national structures for successful carrying out of accession negotiations*** through further building of capacities of involved stakeholders responsible for the EU integration process in Montenegro.

2.3. Expected outputs to be achieved by the contractor

The expected **minimum** outputs, as per Outcomes, are required under this contract:

Outcome 1: Enhanced compatibility of national legislation with EU legislation and its effective implementation

Output 1.1: support **drafting acquis-compliant legislation**, including the timely elaboration of necessary by-laws, instructions and other interpretative materials, action and training plans and other instruments for the smooth implementation of adopted legislation, as per plans and deadlines as set up in the Programme of Accession;

Output 1.2: assist competent institutions in **assessing the new acquis**, effects/impact of the pieces of legislation and their proper implementation in the upcoming period, including planning and timely preparation of the revised national versions of the relevant acquis

Output 1.3: support **expert revision of acquis translations** (according to the EC Vade mecum on pre-accession translation requirements).

Output 1.4: assist competent institutions in assessing **financial implications** of transposed acquis implementation;

Output 1.5: analyse/advise if necessary on the **competences and appropriateness of certain institutions** to be in charge for specific and complex pieces of the acquis, including assistance to relevant institutions in developing the necessary implementation follow-up measures and in monitoring and reporting on the implementation of harmonised legislation;

Output 1.6: support establishing **functional coordination mechanisms** to facilitate implementation of harmonised regulations and advise on/prepare national administration for the practical aspects and challenges in the implementation

Output 1.7: Provide **technical advice on elaboration of national version of the acquis** (e.g. timely planning of translation and revision according to the needs arising from the MPA, synchronisation of the tasks of expert revision of the acquis translations and drafting of the related national legislation, consolidation and consistent usage of expert terminology, etc.)

Output 1.8: In close cooperation with the MEA team (legal harmonisation unit), develop a comprehensive **Manual for alignment of national legislation with the acquis**, incorporating all synchronised phases of the legal alignment process (timely planning, preparation of the national versions of the relevant EU acquis and corresponding legal terminology, drafting of the national legislation, preparation of tables of concordance).#

OUTCOME 2: Enhanced capacities of relevant national structures for successful carrying out of accession negotiations

Output 2.1: **Gap analysis** of the processes of alignment of national legislation with the EU acquis and recommendations for the optimisation of the process.

Output 2.2: **Analysis of stakeholders and institutional mechanisms** for a more efficient alignment with the EU acquis, including enhanced cooperation with the Secretariat for Legislation and the Parliament of Montenegro.

Output 2.3: **Assistance** in elaboration and/or fine-tuning of grounds to overcome and fulfil **interim and closing benchmarks**, including elaboration of required analyses and reports etc. (depending on the situation per chapter based on EU common position);

Output 2.4: Support national negotiating structures in **preparation for the meetings of intergovernmental conference** intended for the provisional closure of respective chapters;

Output 2.5: Provide technical **on-the job** support and advice and **targeted capacity building** to MEA and Negotiating Team and working groups and other directly involved structures in facilitation and coordination of horizontal and vertical negotiating structures and transfer of know-how from recent accession experiences (seminars, workshops, etc.).

Output 2.6: Development and piloting of a nationally accredited comprehensive training programme for the competent institutions on all segments of legal harmonization process (expert revision of the Acquis translations, development of expert terminology, defining new legal concepts that are introduced into the domestic legal system, drafting of national legislation and creating tables of concordance based on the proposed instructions) with focus on delegation of responsibilities, introduction to process timeline, institutions involved in the legal harmonisation process, and stakeholder analysis.

Output 2.7: Establishment of a sustainable **framework for enhanced cooperation with academia** in the field of alignment with the Acquis and analysis of curricula of the relevant state faculties (Faculty of Law, Faculty of Philology)

Output 2.8. Support in establishing a long-term **roadmap** for strengthening of the administrative capacities in the field of European affairs.

3. ASSUMPTIONS & RISKS

3.1. Assumptions underlying the project

- Negotiation Working Groups for specific chapters are fully staffed
- Staff experienced in European integration tasks remain in respective institutions as civil servants
- Dynamics of accession negotiations in accordance with adopted plans and programmes.

3.2. Risks

- Inadequate resources (human/financial) committed by the beneficiary to the project implementation
- Delays attributable to loss of institutional memory due to high rotation of appointees in the EU integration process
- Blocking of the EU accession process of Montenegro on political grounds or for other reasons
- Inadequate cooperation among line institutions
- Insufficient absorption capacities of involved institutions
- Inadequate support to improve the current system for legal harmonization and approximation

4. SCOPE OF THE WORK

4.1. General

4.1.1. Project description

The project aims at fostering the process of accession negotiations of Montenegro by supporting the effective alignment of national legislation with the acquis and its implementation and by further building the capacities of involved stakeholders in the EU integration process.

With the launching of accession negotiations, additional pressure is being put on national institutions in charge for drafting pieces of legislation which need to be fully aligned with the acquis but also implementable and sustainable in the domestic context. It becomes even more challenging therefore to strike a balance between the necessity to adopt or amend legislation by accelerated dynamics and the imperative to ensure that the norms are well thought through, communicated and consulted with all the interested parties, affordable and meaningful in the national legal system, and implementable. Particularities of the acquis are often such that anticipation of effects it will induce in practice is not feasible based only on the domestic experience. It happens also that the concepts of the acquis are not automatically identified by the national legal terminology, but also that the cross-institutional nature of the mechanisms that need to be transposed is confusing and difficulties occur already in determining the national responsible institution to be in charge for such aspects of the acquis. This is why the experience of EU Member states is precious for national administration, as by way of

comparison at least some mistakes might be avoided and some impediments more easily removed. It is evident that in the majority of cases, the *acquis* cannot be simply transposed without elaboration of accompanying by-laws, instructions and other interpretative materials as well as that for the effective implementation, roll-out and phased plans need to be developed and capacities of institutions adequately built. Besides this, follow-up and monitoring of the implementation of the new legislation has to be given particular attention, which in turn again implies additional resources and acquiring of additional skills and competences. Therefore, project is aimed at ensuring high-quality expertise to be provided to national staff dealing specifically with legislative harmonisation and at providing direct transfer of know-how by recommending cost-effective implementation mechanisms and sustainable solutions, including elaboration of studies and impact analysis, setting out operational conclusions. Drafting of harmonised legislation and performing compatibility checks will thus be accelerated and development of the necessary regulatory framework for implementation of the transposed *acquis* facilitated.

After the era of enhanced permanent dialogues and meetings of bodies established under the SAA, as the closest analogue mechanism of exposure and interaction of national administration with the services of the European Commission, Montenegrin public administration enters into much more demanding and obliging exercise of accession negotiations, whereby each step, every meeting and decision should actually result in steps closer to membership in the EU. For this scenario to happen in an uninterrupted pace and in accordance with the planned dynamics, preparedness, high level of competences and availability of accurate information is of crucial importance. This implies consolidation of quality and sources of official statistical data to be presented to the EC and to be taken into consideration in elaborating and sustaining negotiation positions. It also requires timely calculating of costs and gathering of supporting arguments to determine credible and realistic forecasts in the dialogue with the EC. To strengthen national position and timely introduce safeguards when negotiating the substance of each and every chapter, national structures need quality briefings and solutions based on best practices observed by analysing previous accession experiences. The transition of economy and aligning with EU standards is costly, but exactly how much and how long Montenegro can afford before it becomes internally prepared to assume all obligations of membership, is extremely complex estimation to be made. Therefore, the momentum of negotiations is decisive for the future financial and institutional prospects of the state. Resource demanding *acquis* chapters and competitiveness and growth sectors such as environment and energy, agriculture and transport with related infrastructure, but also border controls and aspects involving general administrative capacity building, require high vigilance and realistic assessments on the moment of readiness as even higher costs and prolongations could be generated during negotiations. To support domestic negotiating structures, both in the effective leadership and in the quality operational work, concentrated, well structured, experienced and committed technical assistance shall be needed in the core period of negotiations. This is true for all the institutions involved in negotiating process and in particular for OEI given its mandate. The support will have to be diversified and it is sought for under this project in such a manner to satisfy various stages and phases in the process for different negotiation chapters.

In accordance with findings of the screening process and identified gaps in that process, as well as findings of the Country Report for Montenegro for 2022, focus of the project should be put on the following negotiation chapters:

- Chapter 1: Free movement of goods
- Chapter 3: Right of establishment and freedom to provide services
- Chapter 8: Competition policy
- Chapter 27: Environment and climate change.

The list is not exhaustive and will be defined according to the Country Report on Montenegro, and updated work programme of the Government. Further definition of the chapters/areas of support will be developed during the Inception Phase. These activities will be carried out in close coordination with on-going projects in the same areas, and will build up from results of previous relevant projects. An accurate assessment will be developed as preparatory work for each chapter.

4.1.2. Geographical area to be covered

Montenegro

4.1.3. Target groups

The main beneficiary is the MEA of Montenegro and the Negotiating Working Groups, while other beneficiaries will include the line institutions and structures relevant for certain chapters and/or processes in the course of accession negotiations. Target group should also encompass academic community as detailed below in section 4.2.

4.2. Specific work

The Inception Phase of the project will last 2 months. In this phase, a full project review will be carried out to determine all factors relevant to the project implementation, including an analysis of assumptions and risks. Current activities related to harmonisation with the acquis and achievements of prior projects will be analysed. This appraisal will form the groundwork for the inception report. The Consultant will meet with the main Beneficiary and line ministries/key institutional stakeholders to make sure that they are fully aware of the project's objective and lines of communication are fully established.

The Inception Report will contain a full review and update of the Terms of Reference and any proposed amendments that emerge during this phase. More specifically the report will:

- Detail action plans for each project result, following consultation with the beneficiaries and EUD;
- Provide a timetable for each of the project activities identified;
- Provide a time and input schedule for the achievement of outputs and results;
- A revision and up-date of the Logical Framework as presented in the technical proposal.
- Mapping of all related assistance projects and proposals for coordination mechanisms

Upon agreeing details with the beneficiaries and EUD, the Contractor shall hold an information seminar with key stakeholders and representatives of related projects to explain the work plan in details and establish close cooperation. The outputs of this workshop should be integrated into the Inception Report and Work Plan.

It is advised to organise a visibility event to introduce the project to a wider audience at the end of the Inception Phase.

During this phase the Contractor will establish a mode of day-to-day working collaboration with MEA and EUD.

The Contractor shall prepare an overall visibility plan covering all project activities, which will be annexed to the Consultant's inception report. It is of utmost importance that the project coordinates with MEA and General Secretariat of the Government (GSG), staff in charge of public relations to ensure that communication to the public and aspects related to the implications of EU integration for Montenegro are incorporated into all activities. The contractor must also comply with the latest Communication and Visibility Requirements for EU-funded external action, laid down and published by the European Commission. Throughout the whole duration of the project, the Contractor shall comply with the European Commission's Communication and Visibility Manual for External Actions) https://international-partnerships.ec.europa.eu/knowledge-hub/communicating-and-raising-eu-visibility-guidance-external-actions_en and shall ensure that the visibility of the European Union funding is maximised.

The Contractor will carry out, inter alia, the activities listed below. The list is non-exhaustive and will be complemented according to the project needs.

- **Activities related to Outcome 1: *Enhanced compatibility of national legislation with EU legislation and its effective implementation.***

Some of the expected activities are as follows:

- Provide support to national administration in drafting acquis-compliant legislation, including the timely elaboration of necessary by-laws, instructions and other interpretative materials, action and training plans and other instruments for the smooth implementation of adopted legislation;

Priority areas entail the following clusters/chapters:

- Chapter 1: Free movement of goods
- Chapter 3: Right of establishment and freedom to provide services
- Chapter 8: Competition policy
- Chapter 27: Environment and climate change

The list of priority negotiation chapters/clusters is to be reviewed periodically according to the dynamics of the negotiation process of Montenegro.

- Assist competent institutions in assessing the new acquis and its proper implementation in the upcoming period, including planning and timely preparation of the revised national versions of the relevant acquis
- Assist in expert revision of acquis translations (according to the EC Vade mecum on pre-accession translation requirements).
- Assist competent institutions in assessing the effects/impact of the pieces of legislation to be harmonised and to accurately anticipate financial implications of their implementation;
- Advise if necessary on the competences and appropriateness of certain institutions to be in charge for specific and complex pieces of the acquis
- Assist line institutions in complying with the plans and deadlines as set up in the Programme of Accession;
- Prepare national administration for the practical aspects and challenges in the implementation of harmonised regulations and support establishing of functional coordination mechanisms to facilitate implementation;
- Assist relevant institutions in developing the necessary implementation follow-up measures and in monitoring and reporting on the implementation of harmonised legislation;
- Provide technical advice on elaboration of national version of the acquis (e.g. timely planning of translation and revision according to the needs arising from the MPA, synchronisation of the tasks of expert revision of the acquis translations and drafting of the related national legislation, consolidation and consistent usage of expert terminology, etc.) through all forms of capacity building for relevant stakeholders
- In close cooperation with the MEA team (legal harmonisation unit), develop a comprehensive Manual for alignment of national legislation with the acquis, incorporating all synchronised phases of the legal alignment process (timely planning, preparation of the national versions of the relevant EU acquis and corresponding legal terminology, drafting of the national legislation, preparation of tables of concordance).

These activities will be carried out in close coordination with on-going projects in the same areas, and will build up from results of previous relevant projects. An accurate assessment will be developed as preparatory work for each sector.

- **Activities related to Outcome 2: *Enhanced capacities of relevant national structures for successful carrying out of accession negotiations***

Under this outcome, it is envisaged that the Contractor will implement the following (non-exhaustive) activities:

- Gap analysis of the process of alignment of national legislation with the EU acquis and recommendations for the optimisation of the process.
- Analysis on institutional mechanisms for a more efficient alignment with the EU acquis, including enhanced cooperation with the Secretariat for Legislation and the Parliament of Montenegro.
- Continue support for national administration to elaborate and/or fine-tune negotiating positions as well as to address interim and closing benchmarks.
- In the course of negotiations, ensure assistance to relevant institutions in particular to prepare grounds to overcome and fulfil opening, interim and closing benchmarks, to elaborate required analyses and reports etc. (depending on the situation per chapter based on EU common position);
- Support national negotiating structures in preparation for the meetings of intergovernmental conference intended for the provisional closure of respective chapters;
- Provide technical support and advice mainly to MEA and Negotiating Team, but also to negotiating working groups and other directly involved structures.
- Support MEA and Negotiating Team in facilitation and coordination of horizontal and vertical negotiating structures and in obtaining targeted capacity building and transfer of know-how from recent accession experiences (seminars, workshops, etc.).
- Development and piloting of a nationally accredited comprehensive training programme for the competent institutions on all segments of legal harmonization process (expert revision of the Acquis translations, development of expert terminology, defining new legal concepts that are introduced into the domestic legal system, drafting of national legislation and creating tables of concordance based on the proposed instructions) with focus on delegation of responsibilities, introduction to process timeline, institutions involved in the legal harmonisation process, and stakeholder analysis.
- Establishment of a sustainable framework for enhanced cooperation with academia in the field of alignment with the Acquis and analysis of curricula of the relevant state faculties (Faculty of Law, Faculty of Philology)
- Support MEA in establishing a long-term strengthening of the administrative capacities in the field of European affairs.

4.3. Project management

4.3.1. Responsible body

The European Union Delegation (EUD) to Montenegro is the Contracting Authority for this project.

4.3.2. Management structure

Steering Committee

The Project Beneficiary and institutional coordinator for the implementation of the project is MEA. MEA will appoint one Project Coordinator who will act on behalf of the MEA and all Montenegrin partners as a key contact point for the Contracting Authority and for the Contractor.

Representatives of line ministries directly receiving assistance from the project shall be invited on a case-by case basis, depending on the relevance of the topics of the SC meetings. Other partners in relevant ongoing projects will be invited to take part in the Steering Committee meetings.

The MEA will coordinate with all other stakeholders involved in the project.

The Project will be overseen by a Steering Committee (SC), which will be set up at the start of the project, notably the kick-off meeting. SC will include:

- Project Beneficiary representatives – MEA (Directorate General for EU Accession and EU Acquis and other stakeholders,
- representatives of the Contracting Authority

- the Contractor

The SC will meet at least once every three months and will review the project progress. It will provide comments and propose solutions when necessary. The Committee may invite other organisations to attend meetings where this will bring added value to discussion, direction and outcomes of the Project.

The main functions of the SC are:

- To assess Project progress and guide it strategically;
- To assess the Contractor's performance,
- To discuss the Inception, Interim and Final reports and other reports
- To jointly discuss any critical points or bottlenecks for further Project implementation;
- To propose and discuss remedial actions to be taken in order to tackle problems;
- To issue recommendations affecting timing, cost or Project contents;
- To comment and/or discuss the experts' reports.
- To ensure close co-operation among the relevant ministries and institutions

The SC meeting will take place for the first time upon the submission of the Inception Report.

A representative of MEA/contractor shall be appointed as a secretary to the Steering Committee, ensuring its proper functioning, including:

- Planning, administration and follow-up of all SC meetings, ensuring that all agreed action points taken by the SC are met according to agreed deadlines;
- Ensuring that agenda, summary reports and other meeting materials are available to the SC members (in Montenegrin and English languages) at least 1 working week before scheduled meetings;
- Writing and distributing the minutes of the meetings (the Contractor has to keep them in a file as Project documentation);
- Following up the SC recommendations;
- Meeting all other reporting requests or obligations as may be required.

Meetings between the Contractor, the Project Beneficiary and partners and the EU Delegation Task Manager will be organised as frequently as necessary, to discuss project results and agree on the further implementation of project activities. The organisation of these meetings lies within the responsibility of the Contractor and/or the main Project Beneficiary.

The Contracting Authority will facilitate contacts with Montenegrin authorities.

The responsibility for approving Project reports, other Project documents, Contractor's invoices, addenda to the Contract and any other requests related to the Contract remains with the Contracting Authority. Prior to their submission, all the reports have to be endorsed by the main Project Beneficiary.

For monitoring purposes meetings between the Contractor and the Contracting Authority, with or without the participation of the main Project Beneficiary, the development of ad hoc reports on specific issues when requested may be needed, as well as periodic briefings for the Contracting Authority.

4.3.3. Facilities to be provided by the contracting authority and/or other parties

All facilities for the implementation of the project will be provided by the Contractor, except for office space (please see section 6.2. for further details). For internal coordination meetings and small-scale training events, the beneficiaries will undertake to provide adequate meeting rooms, if and when

possible. The beneficiaries will provide the project experts with copies of legislation, regulations and other relevant documents necessary for the implementation of the project. The beneficiaries will ensure that their main project partner staff are allowed sufficient time from daily activities to participate in all relevant training and other project activities.

MEA as main beneficiary should also provide all possible assistance to solve unforeseen problems that the Contractor may face. The possible failure to solve some of the Contractor's problems encountered locally will not free the Contractor from meeting its contractual obligations vis-à-vis the Contracting Authority.

5. LOGISTICS AND TIMING

5.1. Location

The operational base for the project is Podgorica. Internal travel within Montenegro may be required.

5.2. Start date & period of implementation

The intended start date is May 2023 and the period of implementation of the contract will be 24 months from this date. Please see Articles 19.1 and 19.2 of the special conditions for the actual start date and period of implementation.

The Contracting Authority may, at its own discretion, extend the project in duration and/or scope, up to four (4) times (total cumulative value including all possible extensions up to 3,750,000eur), subject to the availability of funding, satisfactory performance by the Contractor and the needs identified by the Beneficiary.

In case of a project extension, this service contract will be extended by negotiated procedure, each time up to the maximum value of the original contract and initial duration.

6. REQUIREMENTS

6.1. Personnel

Note that civil servants and other staff of the public administration, of the partner country or of international/regional organisations based in the country, shall only be approved to work as experts if well justified. The justification should be submitted with the tender and shall include information on the added value the expert will bring as well as proof that the expert is seconded or on personal leave.

All experts mobilised under this contract must:

- Have excellent knowledge of English;
- Have excellent communication and analytical skills;
- Be proficient in report drafting;
- Have good command of Microsoft Office package (Word, Excel, PowerPoint, etc.) and the Internet
- Have excellent team working abilities.

6.1.1. Key experts

Key experts have a crucial role in implementing the contract. These terms of reference contain the required key experts' profiles. The tenderer shall submit CVs and statements of exclusivity and availability for the following key experts:

Key expert 1: Team Leader (minimum 240 working days)

The Team Leader will have the overall responsibility for the smooth running and timely implementation of all project activities and the efficient use of project funds. The Team Leader will be responsible for the management of the team of experts and for overall quality, coordination, realisation of the activities and outputs, as well as of reporting. The Team Leader is also expected to provide capacity-building events.

S/he will have the following background/experience:

Qualifications and skills

- A university degree (where a university degree has been awarded on completion of three years' study in a university or equivalent institution) in law, political sciences, European studies or other relevant areas, or, in the absence of degree,
- 6 years of experience in areas associated with the project (additional to the requirements of the general professional experience).

General professional experience

- Minimum 8 years of experience in EU policies or EU integration in an EU Member State or candidate/potential candidate country.

Specific professional experience

- Minimum 5 years of experience in accession negotiations or EU related public policy planning in a Member State or candidate/ potential candidate country.
- Minimum 1 year of experience in coordination, managing and leading complex working teams in the public or private sector/organizations or in donor funded projects
- Experience in capacity building for government institutions and agencies related to EU accession process

Key expert 2: Senior legal expert (minimum 240 working days)

The senior legal expert is expected to provide own substantive assistance for the EU accession process, including but not limited to harmonisation of legislation and development of the national version of the acquis.

Qualifications and skills

- A university degree (where a university degree has been awarded on completion of three years study in a university or equivalent institution) in law.
- A Master's or a higher degree will be an advantage
- Knowledge of Montenegrin language will be an advantage.

General professional experience

- Minimum 6 years of experience with harmonisation of legislation with the Union acquis, including policy implementation and coordination among stakeholders.

Specific professional experience

- Minimum 3 years of experience in law drafting in an EU Member State or candidate/ potential candidate country
- Experience in legal harmonisation/transposition of EU acquis in national legislation in an EU Member State or candidate/ potential candidate country
- Experience in the Western Balkans will be an advantage

For all the references stated in the CVs of the key experts, the exact duration of the key experts' project involvement/employment must be indicated in the format "from MM/YY to MM/YY".

The time input of the Key Experts should be as a minimum 90% in the beneficiary country, with the exception of home-based input, which require prior authorisation by the Contracting Authority, and missions abroad related to the project or in special circumstances, where prior approval by the Contracting Authority has been given to carry out tasks outside of the country.

It should be noted that work on holidays and weekends shall not be authorised, unless in duly justified circumstances and with prior approval by the Contracting Authority. Travelling days to/from the beneficiary country will not be accounted as working days and therefore cannot be invoiced as working days.

All experts must be independent and free from conflicts of interest in the responsibilities they take on.

Key experts may be interviewed, as stated in Instructions to tenderers, point 12.1.1.

6.1.2. Non-key experts

CVs for non-key experts should not be submitted in the tender but the tenderer will have to demonstrate in their offer that they have access to experts with the required profiles.

Priority areas where the Contractor should be prepared to provide short-term non-key experts include, but are not restricted to:

- Harmonisation of national legislation with the EU acquis and in-country legal analysis;
- Preparation of the national version of the EU acquis with particular focus on expert revision and defining legal terminology;
- EU accession and negotiations related requirements, with particular focus on free movement of goods, right of establishment and freedom to provide services, competitiveness, state aid, environment;
- Review and development of legislative framework for EU cohesion policy;
- Trainings, workshops and seminars organisation;
- Communication and organisation of information/promotional events;
- Design/review of curricula for higher education institutions
- Any other activities required for the implementation of the tasks.

The Contractor shall specify the no. of working days for Senior Experts and Junior Experts and reflect the numbers in the financial offer.

Required general professional experience for the non-key experts is at least 5 years for the senior, and at least 3 years for the junior experts.

The contractor must select and hire other experts as required according to the profiles identified in the organisation & methodology and these Terms of Reference. It must clearly indicate the experts' profile so that the applicable daily fee rate in the budget breakdown is clear. All experts must be independent and free from conflicts of interest in the responsibilities they take on.

The selection procedures used by the contractor to select these other experts must be transparent, and must be based on pre-defined criteria, including professional qualifications, absence of conflict of interests, language skills and work experience. The findings of the selection panel must be recorded. The selected experts must be subject to approval by the contracting authority before the start of their implementation of tasks.

The Contractor is expected to mobilise a large number of experts, so that all tasks can be completed in time. The Contractor must have the flexibility and on-demand capacity to respond to expertise requirements as they arise.

6.1.3. Support staff & backstopping

The Contractor will provide support facilities to their team of experts (back-stopping) during the implementation of the contract.

Backstopping and support staff costs must be included in the fee rates.

6.2. Office accommodation

Office accommodation of a reasonable standard for two experts at a time is to be provided by MEA. A landline phone connection and Wi-Fi will be provided as well.

6.3. Facilities to be provided by the contractor

The contractor must ensure that experts are adequately supported and equipped. In particular it must ensure that there is sufficient administrative, secretarial and interpreting provision to enable experts to concentrate on their primary responsibilities. It must also transfer funds as necessary to support their work under the contract and to ensure that its employees are paid regularly and in a timely fashion.

6.4. Equipment

No equipment is to be purchased on behalf of the contracting authority / partner country as part of this service contract or transferred to the contracting authority / partner country at the end of this contract. Any equipment related to this contract that is to be acquired by the partner country must be purchased by means of a separate supply tender procedure.

6.5. Incidental expenditure

The provision for incidental expenditure covers ancillary and exceptional eligible expenditure incurred under this contract. It cannot be used for costs that should be covered by the contractor as part of its fee rates, as defined above. Its use is governed by the provisions in the general conditions and the notes in Annex V to the contract. It covers:

- Travel costs and subsistence allowances for missions, outside the normal place of posting, undertaken as part of this contract. If applicable, indicate whether the provision includes costs for environmental measures, for example CO₂ offsetting.
- Expenses related to venue, catering and refreshments during training and workshops
- Cost of printing and reproducing project materials and documentation when required and production of CD copies
- Translation and interpretation costs directly linked to the contract activities (cost of interpretation and translation can be financed from incidentals only if these tasks cannot be ensured by the support staff of the project)
- Visibility costs and organisation of visibility events of the project (venue, catering, materials equipment, interpretation etc.).
- PCR/other COVID-19 tests, if and when required for entry into Montenegro for agreed expert missions

The provision for incidental expenditure for this contract is EUR 70,0000. This amount must be included unchanged in the budget breakdown.

Per diem are daily subsistence allowances that may be reimbursed for missions foreseen in these terms of reference or approved by the Contracting Authority, carried out by the contractor's authorised experts outside the expert's normal place of posting. The per diem is a maximum fixed flat-rate covering daily subsistence costs. These include accommodation, meals, tips and local travel,

including travel to and from the airport. Taxi fares are therefore covered by the per diem. Per diem are payable on the basis of the number of hours spent on the mission. Per diem may only be paid in full or in half (no other fractions are possible). A full per diem shall be paid for each 24-hour period spent on mission. Half of a per diem shall be paid in case of a period of at least 12 hours but less than 24 hours spent on mission. No per diem should be paid for missions of less than 12 hours. Travelling time is to be regarded as part of the mission. Any subsistence allowances to be paid for missions undertaken as part of this contract must not exceed the per diem rates published on the website - https://international-partnerships.ec.europa.eu/funding/guidelines/managing-project/diem-rates_en - in force at the time of contract signature.

The contracting authority reserves the right to reject payment of per diem for time spent travelling if the most direct route and the most economical fare criteria have not been applied.

Prior authorisation by the contracting authority for the use of the incidental expenditure is not needed.

6.6. Lump sums

No lump sums are foreseen in this contract.

6.7. Expenditure verification

The provision for expenditure verification covers the fees of the auditor in charge of verifying the expenditure of this contract in order for the contracting authority to check that the invoices submitted are due. The provision for expenditure verification for this contract is EUR 15,000. This amount must be included unchanged in the budget breakdown.

This provision cannot be decreased but can be increased during execution of the contract.

7. REPORTS

7.1. Reporting requirements

Please see Article 26 of the general conditions. Interim reports must be prepared every six months during the period of implementation of the tasks. They must be provided along with the corresponding invoice, the financial report and an expenditure verification report defined in Article 28 of the general conditions. There must be a final report, a final invoice and the financial report accompanied by an expenditure verification report at the end of the period of implementation of the tasks. The draft final report must be submitted at least one month before the end of the period of implementation of the tasks. Note that these interim and final reports are additional to any required in Section 4.2 of these terms of reference.

Each report must consist of a narrative section and a financial section. The financial section must contain details of the time inputs of the experts, incidental expenditure and expenditure verification.

To summarise, in addition to any documents, reports and output specified under the duties and responsibilities of each key expert above, the contractor shall provide the following reports:

Name of report	Content	Time of submission
Inception Report	Analysis of existing situation and work plan for the project	No later than 2 month after the start of implementation
6-month Progress Reports	Short description of progress (technical and financial) including problems encountered; planned work for the next 6 months accompanied by an invoice and	No later than 1 month after the end of each 6-month implementation period.

	the expenditure verification report.	
Draft Final Report	Short description of achievements including problems encountered and recommendations.	No later than 1 month before the end of the implementation period.
Final Report	Short description of achievements including problems encountered and recommendations; a final invoice and the financial report accompanied by the expenditure verification report.	Within 1 month of receiving comments on the draft final report from the Project Manager identified in the contract.

7.2. Submission & approval of reports

Two (2) copies of the reports referred to above (in paper and electronically on a USB stick or equivalent) must be submitted to the Programme Manager identified in the contract. The reports must be written in English. The Programme Manager is responsible for approving the reports. In addition, the reports need to be endorsed by the beneficiary.

8. MONITORING AND EVALUATION

8.1. Definition of indicators

Suitable objectively verifiable indicators to assess project performance in terms of deliverables, achievement of results and impacts will be developed during the Inception Phase and agreed between the Contracting Authority, main Beneficiary and the Contractor. Performance indicators will be described in the Inception Report, and will be discussed, approved and regularly reviewed by the Steering Committee, and reflected in Progress reports. The Contractor is expected to suggest initial suitable indicators for activities and deliverables as part of the Organisation & Methodology in the Technical Offer, with baselines and targets.

Indicators will be based, among other factors, on efficient inputs/outputs ratio and on real impact of project activities and outputs and can be quantitative or qualitative. They may include, but are not restricted to:

(Impact)

Level of alignment with the EU acquis in selected negotiation chapters

Outcome 1

Assessment of new acquis and update to existing roadmaps/plans

Specific pieces of legislation aligned with the EU acquis and including development of necessary implementing provisions

Assessment of financial implications of implementation of legal harmonisation

Assessment of institutional framework and roles and responsibilities of key stakeholders

A comprehensive Manual for alignment of national legislation with the acquis completed

Number of intermediary and closing benchmarks addressed

Outcome 2

Gap analysis of the process of alignment of national legislation with the EU acquis and recommendations for the optimisation of the process completed

Improved procedures, coordination and capacities of relevant stakeholders for alignment of national legislation to the EU acquis

Number of trainings/workshops organised

Number of people trained

A nationally accredited comprehensive training programme for the competent institutions on all segments of legal harmonization process developed and piloted.

8.2. Special requirements

Please note that the Organisation and methodology shall not exceed 40 pages (font size 12, standard margins).

8.2.1 Rules on taxes, customs duties and other fiscal charges

Following the contract signature, the EUD will share detailed instructions on VAT exemptions.

Please note that exemption of taxes, duties and other charges related to the delivery of service under Community financed service contract are governed and based on the Article 28 (Rules on taxes, customs duties and other fiscal charges) of the Financial Framework Partnership Agreement (FFPA) between the Government of Montenegro and the Commission of the European Communities on specific arrangements for implementation of Union financial assistance to Montenegro under the Instrument for Pre-Accession Assistance (IPA III).

8.2.2 Conflict of interests

The experts will carry out duties entrusted to them by the contract loyally and impartially and in accordance with best professional practices. They will maintain complete independence in relation to all individual organisations or government bodies. They will observe the strictest neutrality with regard to views and opinions, particularly in the field of politics or religion, held in the country where the project will be executed.

They will also respect all laws and regulations in force in the country where the project will be executed. They may not divulge, or use for their personal profit or for the profit of a third party, any information that they may receive in executing the project. They will supply the European Commission with whatever information relating to the execution of the project that it may reasonably request.

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