

TERMS OF REFERENCE

for short-term engagement of expert for Analysing compliance of existing legislation on lower governments' levels with BiH Law for protection the rights of members of national minorities

I BACKGROUND

1.1. Beneficiary country

The action will be implemented in Bosnia and Herzegovina.

1.2. Project description

Title: 'EU for Civil Society (EU4CS) - Capacity building of Governments to include CSOs into the decision-making, Bosnia and Herzegovina'

The *overall objective* of this project is to address the problem of weak cooperation and dialogue between governments and civil society in Bosnia and Herzegovina and to extend support to inclusive social dialogue and social partners (employees, employers, governments) including in relation to legislation, collective negotiations, assessing the need for new legislation, drafting the laws and monitoring the implementation of reforms.

The *specific objective* is to target the problem of weak cooperation and dialogue between governments and civil society in Bosnia and Herzegovina and extend it in direction of support to social dialogue and social partners (employees, employers, governments) including on such issues as legislation, collective negotiations, assessing the need for new legislation, drafting the laws and monitoring the implementation of reforms.

Expected *outputs* to be achieved include:

- Strengthen capacity of the public institutions and CSOs for better cooperation on policy dialogue,
- Strengthen capacity of the CSOs for better cooperation on creating and drafting strategic, legal and policy framework,
- Improved social dialogue between social partners (employees, employers, governments) at all institutional levels,
- Ensure participations of CSOs in the public consultations process/public debates on different institutional levels,
- Improved transparency in financing of CSOs by public institutions and
- Improved CSOs programme and financial reporting system to relevant institutions.

Project '*EU for Civil Society (EU4CS) - Capacity building of Governments to include CSOs into the decision-making, Bosnia and Herzegovina*', is implemented by international consortium led by PCM Consulting, Igor Stojanovic sp, Voždovačka 4, 78000 Banja Luka, Bosnia and Herzegovina
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1.3. Relevant country background

Since 1995 and according to the Dayton Agreement the state of Bosnia and Herzegovina has been divided into two political entities – the Republic of Srpska (RS) and the Federation of Bosnia and Herzegovina (FBiH) – and the Brčko District (condominium). The RS covers 49 % of the territory and forms a semi-circle around the north and east, while the FBiH occupies the other 51%. Each Entity has its own political structure and administration. The BiH State government consists of a Parliamentary Assembly, which is divided into a House of Representatives and a House of Peoples, a rotating tripartite Presidency (with one member from each of the constituent peoples – Bosniaks, Croats and Serbs), and a Council of Ministers with nine ministries. The political structure of the FBiH is divided into three levels: the Entity level, the Cantonal level and the Municipal level, with each municipality having its own municipal council and administrative structures. By contrast, the Republic of Srpska (RS) has no cantons, only municipalities.

Therefore, in such a complex environment non-state actors (NSA) have difficulties in advocating for reforms in the above mentioned areas.

According to the latest data obtained from the BiH Ministry of Justice¹, there are more than 27,000 organisations that can be considered as civil society non-profit organisations. At the State and Federation BiH level, the Ministries of Justices are responsible for registration and for keeping the Registry Books for Associations and Foundations. According to RS's Law on Associations and Foundations, associations and foundations register at the Basic Court in the seat of the District Court in the area in which they have their seat.

1.4. Current state of affairs in the relevant sector

Bosnia and Herzegovina still lacks a comprehensive policy framework on the promotion and enforcement of human rights, including countrywide strategies on human rights, non-discrimination, and the protection of minorities². Consequently, the protection of human rights continues to be uneven across the country.

The participation in political and public life of persons belonging to national minorities remains low³. No progress was made towards adopting a countrywide strategy on national minorities. The authorities still need to comply with the recommendations of the fourth review cycle under the Framework Convention for the Protection of National Minorities from November 2017 to condemn statements of politicians and public figures inciting ethnic hatred and to take measures promoting intercultural dialogue and understanding.

According to the Law on the Protection of the Rights of Members of National Minorities in BiH ("Official Gazette of BiH", no. 12/03, 76/05 and 93/08), the Council of National Minorities of Bosnia and Herzegovina is defined as a special advisory body of the Parliamentary Assembly of Bosnia and Herzegovina which gives opinions, advice and proposals to the Parliamentary Assembly of Bosnia and Herzegovina on all issues concerning the rights, position and interests of national minorities in Bosnia and Herzegovina. In fact, Council of National Minorities of Bosnia and Herzegovina present a institutional mechanism for cooperation with CSOs, since BiH Parliamentary Assembly, during appointment of the members of the Council of National Minorities (in the phase of candidate selection) is obliged to consult with associations of national minorities or other non-governmental organizations⁴.

The national minorities' councils should become more active in developing practical, political and legislative initiatives. In 2022, the Ombudsman received 12 complaints concerning rights of persons belonging to minorities (compared to three in 2021 and two in 2020) and issued two recommendations. Minorities and unaffiliated citizens, remain barred from running for the Presidency and House of Peoples. This has been repeatedly condemned by the ECtHR since 2009 (Sejdić-Finci case law). Pending constitutional and electoral reforms are of utmost importance to ensure equality for all.

By the Law on Ministries and Other Administrative Bodies of Bosnia and Herzegovina ("Official Gazette of BiH", No. 5/03, 42/03, 26/04, 42/04, 45/06, 88/07, 35/09, 59/09 , 103/09, 87/12, 6/13 and 19/16), in Article 12, paragraph (1) point (9), it is regulated that the Ministry of Human Rights and Refugees of Bosnia and Herzegovina is competent for cooperation with national minorities and their associations.

By ratifying the Framework Convention for the Protection of National Minorities of the Council of Europe (2000), Bosnia and Herzegovina assumed significant obligations to protect the rights of members of national minorities in BiH as well as rights of associations of national minorities.

¹ For more details please consult <http://zbirniregistri.gov.ba/> (only accessible in Bosnia and Herzegovina's official languages)

² EC Bosnia and Herzegovina 2023 Report - https://neighbourhood-enlargement.ec.europa.eu/bosnia-and-herzegovina-report-2023_en

³ Ibid

⁴ <https://www.parlament.ba/committee/read/36?lang=en>

The framework convention was the basis for the adoption of the Law on the Protection of the Rights of Members of National Minorities of Bosnia and Herzegovina (2003). After the adoption of the law at the state level, the Republic of Srpska ("Official Gazette of Republika Srpska" No. 2/05), the Federation of Bosnia and Herzegovina ("Official Gazette of the Federation of BiH", No. 56/08), and Brčko District of BiH ("Official Gazette of BD BiH No. 41/20 and 13/21) passed their laws on the protection of national minorities.

In addition to the laws at the state, entity and Brčko District levels, three more cantons in the Federation have passed their own laws (Sarajevo Canton, Tuzla Canton and Una-Sana Canton).

However, the association of national minorities noticed that the laws are not mutually harmonized⁵.

II SCOPE OF THE ASSIGNMENT

2.1. Description of the assignment

Expert for analysing compliance of existing legislation on lower governments' levels with BiH Law for protection the rights of members of national minorities (hereinafter referred to as "Expert") has to analyse existing Laws on all BiH levels related with protection the Rights of Members of National Minorities in order to assess their compliance with Framework Convention for the Protection of National Minorities of the Council of Europe (including recommendations of the fourth review cycle under the Framework Convention for the Protection of National Minorities from November 2017) and also assess compliance of existing legislation on lower governments' levels (Republic of Srpska, Federation BiH, Brčko District and cantons in Federation BiH), in close cooperation with relevant institutions and national minorities' councils on all levels, as well as with civic society organizations and other interested actors (including EU4CS project).

It is envisaged that the selected expert shall elaborate an assessment report indicating the level of compliance of the existing relevant legislation on lower governments' levels with BiH Law for protection the rights of members of national minorities, indicating identified gaps. The assessment report shall also recommend changes necessary to fully harmonise legal framework on all BiH levels and also harmonize legislation with recommendations of the fourth review cycle under the Framework Convention for the Protection of National Minorities from November 2017.

Number of required experts: One (1) Non-Key Junior Short-Term Expert

Duration of the assignment: Up to a total of 12 working days

Period of the assignment: January 2024 – Middle of March 2024

Working language: Official languages in BiH

2.2. Geographical area

The geographical area to be covered is Bosnia and Herzegovina, in accordance with the competences of the BiH Council of Ministers.

2.3. Target group

During the analysis of the relevant legislation, the following representatives of target group are to be engaged:

- BiH Ministry for Human Rights and Refuges,
- Relevant public institutions from the lower governments' levels (both entities, Brčko District, cantons in federation BiH),
- Members of national minorities' councils and civic society organisations active in area of minority protection,
- Project EU4CS.

⁵ Information from BiH Ministry for Human Rights and Refuges

2.4. Deliverables to be provided by the Expert

Tasks description:

- A draft legal assessment report highlighting a level of compliance of the existing relevant legislation on lower governments' levels with BiH Law for protection the rights of members of national minorities, indicating identified gaps including results of the gap analysis and a recommendations for legislative actions needed in order to achieve a full harmonisation of (a) the existing relevant legislation on lower governments' levels with BiH Law for protection the rights of members of national minorities and a proposal for measures needed for improvement of institutional framework and (b) of entire BiH relevant legislation with recommendations of the fourth review cycle under the Framework Convention for the Protection of National Minorities from November 2017,
- A draft legal amendments needed for achieving needed harmonization of relevant legislation on lower governments' levels with BiH Law for protection the rights of members of national minorities and with recommendations of the fourth review cycle under the Framework Convention for the Protection of National Minorities from November 2017;

2.5. Payment

The payments will be completed upon the full completion and acceptance of the contract's obligations, and upon the approval of the Experts' time and log sheets from the EU programme manager.

III METHODOLOGY

Methodology for executing target analysis will be developed by the Expert and adopted by BiH Ministry for Human Rights and Refugees on the beginning of the assignment.

IV REQUIREMENTS

4.1. Expert's profile

Qualifications and skills

- University degree in political or social sciences, public administration or similar, relevant to this assignment
- Computer literacy;
- Fluency in both written and spoken English and BiH languages is advantage.

Professional experience

General professional experience:

- Minimum 7 years of postgraduate professional experience in area(s) related with this assignment;

Specific professional experience:

- At least 3 years of post-graduate professional experience in policy analysis in the field related with purpose of this assignment or similar,
- Experience in working in IPA countries (Croatia, The former Yugoslav Republic of Macedonia, Turkey, Albania, Bosnia and Herzegovina, Montenegro, Serbia, and Kosovo (under UNSCR 1244)) will be considered an advantage

Please note that, civil servants and other staff of the public administration of the beneficiary country cannot be recruited as experts, unless prior written approval has been obtained from the European Commission.

V EVALUATION

Received applications from the experts will be evaluated against evaluation criteria development in line with required qualifications and experiences of the experts, as presented within the section 4 of this ToR.

VI DOCUMENTS TO BE INCLUDED WHEN SUBMITTING THE PROPOSALS

6.1. *Applicants shall submit the following documents:*

- Personal CV including information on experience in similar projects / assignments and
- Application letter to EU4CS confirming interest and availability for the expert assignment with Financial Proposal, indicating fee per working day.

6.2. *Application Procedure*

Applicants interested in applying should submit documents from 6.1. (EU format CV and application letter, both in English) by e-mail to info@eu4cs.ba with a copy to teamleader@eu4cs.ba not later than 16:00 hrs, January 23rd, 2024, titled:

Application for the position:

Expert for analysing compliance of existing legislation on lower governments' levels with BiH Law for protection the rights of members of national minorities

References must be available on request.

Only short-listed candidates will be contacted.

All applications will be considered strictly confidential.

For more information, please contact Igor Stojanovic, Team Leader EU4CS: teamleader@eu4cs.ba