



TERMS OF REFERENCE

International Consultant on EU approximating and upgrading the Moldovan Environmental Protection Law

Job title:	International Consultant on EU approximating and upgrading the Moldovan Environmental Protection Law
Duty station:	Chisinau, Moldova
Reference to the project:	Building Institutional Capacity of the Ministry of Foreign Affairs and European Integration
Contract type:	Individual Contract (IC)
Expected workload:	Up to 25 working days
Starting date:	January 2015

BACKGROUND:

Relations between the Republic of Moldova (RM) and the European Union (EU) formally started with the signing of the Partnership and Cooperation Agreement (PCA) in 1994 that entered into force in 1998. The PCA established the basic principles of cooperation between RM and EU and was designed for a 10 year period.

The Partnership and Cooperation Agreement will soon be replaced by an Association Agreement which includes a Deep and Comprehensive Free Trade Area (DCFTA). The documents provide for political association and economic integration and have been initialed in Vilnius in November 2013.

For the Republic of Moldova the AA represents a reform agenda which is based on a comprehensive program of legal harmonization with EU norms.

Exceeding the classical arrangements of free trade, DCFTA provides not only a mutual opening of markets for most goods and services but requires a gradual rapprochement of norms and standards such as quality standards and rules, sanitary rules, intellectual property rights, trade facilitation, public procurement and competition, energy trade and other.

Except for European Economic Area and EU candidate states, never before has the EU opened its internal market to such an extent to a third country. This reality is possible due to the commitment of the Republic of Moldova to take over the *acquis communautaire*.

In exchange to effective implementation of EU legislation Moldova will gradually become part of the EU internal market.

A deeper economic integration through DCFTA will boost the country's economic growth, will create business opportunities and promote real economic modernization and integration into the EU. The direct result of establishing free trade area with EU is that citizens will benefit from higher quality and safer goods and services while manufacturers will be supported to access international markets.

UNDP and its international partners are committed to assist Moldova, through technical and financial assistance, in promoting costly legal and institutional reforms that DCFTA entails.

The Project "Building Institutional Capacity of the Ministry of Foreign Affairs and European Integration (MFAEI)" aims at strengthening the institutional capacity of the MFAEI as lead institution in the AA negotiation process. In the same context, the Project seeks to contribute to developing EU integration capacities of key line ministries through aligning relevant policies, administrative and institutional arrangements, legislation, procedures and best practices to EU standards and requirements.

The objective of the assignment is to support the Ministry of Environment to implement its EU-integration related reform Agenda and in particular to assist the Ministry in (I) legal drafting in relation to the changes or amendments arising out of the consultative component of the law approval process (II) Supporting the Ministry in negotiation of the draft Law through the Regulatory Impact Analysis (RIA) process. Given the application of the polluters pays and cost recovery principles in EU environmental law in the provisions of the draft EPL there is potential for impact on business operations. As a result there is a risk that the draft EPL due to its conformity to EU environmental principles and legal acts, may be subject to extensive delays and a protracted RIA process.

The draft EPL is a single law that provides the legal and institutional framework for environmental management without having to legislate comprehensively. Such legislation declares environmental goals and policy, and lays down basic legal principles and institutional arrangements. Draft laws are subject to a consultative process where the law is submitted for comment to public bodies. The next step in this process is enactment of the new law which requires the promotion of the law as part of the law approval process of regulatory impact assessment, public consultation, Government approval and adoption by the Parliament of Moldova. The process allows stakeholders to make comments on a draft law which may involve further legal drafting to take account of changes or amendments. Overall the Environmental Protection Law along with the Environment Strategy for Moldova, recently approved by Government, are strategic documents setting out a road map for the approximation process in the environmental sector and setting priorities for approximate to EU and international norms and standards.

The Ministry of Environment is concerned about negotiating the draft Environmental Protection Law (EPL) through the Regulatory Impact Assessment (RIA) process and has requested advice and support to elaborate the RIA and support the negotiation process for the draft EPL in 2015. The RIA is important as it also serves as the basis for Law promotion as the RIA document are included in the law approval process, of public consultation, Government approval and adoption by the Parliament. A RIA process was introduced as mandatory for the development of all new laws and regulatory acts affecting business operations. In addition, business owners are able to voice their views through a committee set up to address new draft legislation. New environmental laws are often treated by business owners in Moldova as an excessive burden. Given the application of the polluters pays and cost recovery principles in EU environmental law in the provisions of the draft EPL there is potential for impact on business operations. As a result there is a high risk that the draft EPL due its conformity to EU environmental principles and legal acts, may be subject to extensive delays and a protracted RIA process.

To mitigate this risk a RIA will be required in conformity with the requirements of GD No 1230 of 24th October 2006 including the evaluation of costs and benefits. Extensive consultations and dialogue will also be required in 2015 with the Ministry of Economy RIA and the business committee to ensure mutual understanding and a balanced approach to environmental regulation. The Ministry of Environment envisages an International Expert on EU Environmental Law as being central to supporting the Ministry in this process. The framework for negotiation is provided by the environmental commitments of the EU Moldova Association Agreement and the Government 2020 Strategy which recognizes the importance of sustainable economic growth. The Strategy states 'Government's strategic vision over medium and long term is the reconciliation between the need for accelerated economic development and environmental protection in conformity with European standards. This will materialize through: (i) achievement of a rate of economic development that would allow an increasing financing of environmental protection measures, and (ii) balanced regulation of the business environment, both in terms of economic impact and environmental impact.'. However, the challenge of progressing new concepts based on EU environmental law and policy which impact on the business community and the potential for a protracted negotiation process should not be underestimated.

Objective

The global objective of the assignment is to strengthen and enhance good environmental governance in order to enable the Ministry of Environment, Moldova to meet EU and international standards.

The specific objective is to analyze the draft of Environmental Protection Law, to adjust it in accordance with changes or amendments arising out of the consultative process, and to carry out the Regulatory Impact Analysis for this draft law in accordance with the GD No. 1230 of 24th October 2006.

This objective should be met through the following activities and through the following deliverables:

Key activities

1. Legal drafting in relation to the changes or amendments arising out of the consultative process, part of the law approval process. The legal drafting of changes or amendments to the Draft Environmental Framework Law should conform to the expected standard of clear drafting for regulatory instruments and in respect of user standards of clarity and simplicity.

2. Supporting the Ministry in elaboration of the RIA document and in the negotiation of the draft Law through the Regulatory Impact Analysis (RIA) process. The content of preliminary RIA document should include at least the following chapters (based the Governmental Decision no. 1230 of 24th October 2006):
 - Define the problem: define the problem to be solved, establish and determine potential results of state regulations;
 - Major costs and anticipated benefits of state intervention: identify the major potential impact of state intervention (qualitative and quantitative indicators);
 - Evaluation of alternative approaches;
 - Consultative strategy: identify the main stakeholders who could contribute to the formulation of actions necessary to address the problem and aimed by intended regulations; propose consultancy methods and communication tools to be used;
 - Recommendations: propose policy tools and recommendations for undertaking specific actions;
 - Summary of RIA and recommendation on the necessity of elaboration of the draft Environmental Protection Law.
3. Produce a final mission report and share the findings and recommendations during a workshop with key stakeholders (including representatives of the Centre for Legal Approximation).

Deliverables

- Environmental Framework Law drafted in accordance with changes or/and amendments arising out of the consultative process, as a part of the law approval process, and in conformity with EU and international environmental standards and best practices. The legal drafting of changes or amendments to the Draft Environmental Framework Law should conform to the expected standard of clear drafting for regulatory instruments and in respect of user standards of clarity and simplicity.
- Regulatory Impact Analysis elaborated in accordance with the requirements of Governmental Decision no. 1230 of 24th October 2006
- Support provided to the Ministry of Environment in the negotiation of the draft Law through the Regulatory Impact Analysis (RIA) process in relation to the impact of EU environmental law and policy on the legal framework and on business in Moldova
- Workshop with beneficiaries delivered.

Resources

25 working days (a minimum 20 of which in Moldova) within maximum two missions.

Mission schedule:

The assignment shall be undertaken in the period January - March 2015 with detailed timetable to be agreed with the Beneficiaries.

The 25 working days allocated for this task should be used approximately as follows:

Deliverable/Activity /milestone	Indicative timeframe
• Environmental Framework Law drafted	10 days
• Regulatory Impact Analysis elaborated	10 days
• Support provided to the Ministry of Environment in the negotiation of the draft Law through the Regulatory Impact Analysis (RIA) provided	4 days
• Workshop delivered	1 day
Total	25 days

All deliverables should be agreed with the UNDP and the Ministry of Environment, and be provided in hard and electronic copy.

Institutional arrangements:

The International Consultant will work in close collaboration with the UNDP and the Ministry of Environment – for substantive aspects of the assignment, and under the direct supervision of the Project Manager – for administrative aspects.

The International Consultant will be located in the premises of the Ministry of Environment and will work closely with the Ministry / Subordinate institutions staff. The Ministry will provide the Consultant working space, access to Internet, printer and telephone line.

Payments shall be made upon acceptance of deliverables by beneficiary and UNDP Project Manager.

Qualifications Required:

Academic Qualification

- Master's Degree + 10 years of professional experience or Bachelor Degree + 15 years of professional experience, preferably in Law, with specialization in EU and international environmental legislation.
- Relevant PhD would be an asset.

Experience

- Good knowledge and minimum 10 years of experience in the field of environmental law drafting and analysis in the area of EU approximation.
- Proven work experience in at least 5 areas of EU environmental law, policies and instruments

- Experience in at least 5 projects related to environmental law reform
- Experience of drafting an environmental framework law in line with the requirements of the environmental acquis and/or the Association Agreement is preferable
- Experience in similar projects in the region and/or Moldova is an advantage
- Demonstrated experience in delivering legal training on EU environmental law and policy.

Competencies

- Strong analytical and drafting skills.
- Ability to analyse, plan, communicate effectively with stakeholders and present ideas clearly and effectively.
- Demonstrated interpersonal and diplomatic skills.
- Ability to enter new environments, adapt quickly and produce immediate results.
- Computer literacy - competent user of Microsoft Office programs.

Language requirements

- Fluency in written and spoken English. Knowledge of Romanian or Russian would be an asset.

Resources:

The period of the assistance: January – March 2015

Documents to be included when submitting the proposals:

Interested individual consultants must submit the following documents/information to demonstrate their qualifications:

1. Proposal: explaining why they are the most suitable for the work;
2. Financial proposal specifying a total lump sum amount;
3. Personal CV including past experience in similar projects and **at least 3 references.**