

ANNEX II: TERMS OF REFERENCE

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1. BACKGROUND INFORMATION

1.1. Partner parties

The Signatory Parties of the Central European Free Trade Agreement (CEFTA) 2006 (“Agreement”) (“CEFTA Parties”).

1.2. Contracting authority

The Secretariat of the Central European Free Trade Agreement 2006 on behalf of the CEFTA Parties (“the CEFTA Secretariat”).

1.3. Background

On December 19, 2006, Albania, Bosnia and Herzegovina, Croatia, Macedonia, Moldova, Montenegro, Serbia, and the UNMIK on behalf of Kosovo in accordance with the UNSC Resolution 1244, signed an Agreement to amend and enlarge the Central European Free Trade Agreement.

Following the necessary ratification processes, the Agreement entered into force in 2007. On 1 July 2013, Croatia withdrew from the Agreement to join the EU.

The Agreement’s main objectives are, *inter alia*, to expand trade in goods and services, and foster investment by means of fair, stable and predictable rules, eliminate barriers to trade between the Parties, provide appropriate protection of intellectual property rights in accordance with international standards and harmonise provisions of modern trade policy issues such as competition rules and state aid. It also includes clear and effective procedures for dispute settlement and facilitates the gradual establishment of the EU-Western Balkans zone of diagonal cumulation of origin.

The Agreement fully conforms to the World Trade Organisation (WTO) rules and procedures and relevant EU *acquis*. Effectively implemented, the Agreement provides an excellent framework for the Parties to be prepared for EU accession, thus continuing the tradition of the original CEFTA, whose founding members are now in the EU.

In November 2020, the leaders of the Western Balkans 6 have adopted **Common Regional Market Action Plan 2021-2024**¹, as key policy framework for regional economic integration. CEFTA has been identified one of the key actors tasked to implement trade related regional actions.

The Action Plan is composed of targeted actions in four key areas:

- **Regional trade area:** free movement of goods, services, capital and people, including crosscutting measures, such as the Green Lanes, to align with EU-compliant rules and standards and provide opportunities for companies and citizens;
- **Regional investment area,** to align investment policies with the EU standards and best international practices and promote the region to foreign investors;
- **Regional digital area,** to integrate the Western Balkans into the pan-European digital market; and
- **Regional industrial and innovation area,** to transform the industrial sectors, shape value chains they belong to, and prepare them for the realities of today and challenges of tomorrow.

¹ <https://cefta.int/wp-content/uploads/2020/11/Common-Regional-Market-2021-2024-Action-Plan.pdf>

The **Economic and Investment Plan for the Western Balkans**² welcomes the complementarity of the Common Regional Market with the EU integration process as it will pave the way for a deeper economic integration with the EU Single Market. The implementation of sectoral agreements in this regional framework will be taken into account in the assessment of how prepared Western Balkan economies are for participation in the EU Single market in the given sector. In this respect, integrating the region more closely with the EU Single market before WB economies accede to the Union is the guiding principle of this Action Plan.

1.4. Current situation in the sector

2023 CEFTA Chairmanship of Montenegro has identified free trade in services as one of its key priorities. More specifically, the Chair in Office has committed to initiate and support the exercise of updating the information on services regulatory policies under the CEFTA Services Regulatory Database³ in close cooperation with International Trade Centre, GIZ and WTO.

One of the building blocks of the **Common Regional Action Plan 2021-2024**⁴ is the free movement of services and transparency. More specifically, actions are directed towards ensuring a sustainable and up-to-date mechanism for exchange of information on key measures affecting trade in services in most important services sectors; as well as maintaining and enhancing exchange of data through the CEFTA Services Regulatory Database.

Additional Protocol 6 on Trade in Services (AP6)⁵ adopted in 2019 has entered into force on 11 January 2021 provides legal framework for trade in services and cooperation among the Parties in this respect. Article 9 of the Additional Protocol 6 provides that Parties should promptly and at least annually inform on the introduction of any new, or any changes to existing, laws, regulations or administrative measures which significantly affect trade in services covered by its specific commitments under the AP6.

During 2018-2019 CEFTA Secretariat has collected detailed information on regulatory measures in selected services sectors based on the agreed methodology with the WTO and World Bank. This information was then validated by the Parties and uploaded on the newly established Services Regulatory Database.

In March 2021 CEFTA Secretariat and WTO Secretariat exchanged letters agreeing to cooperate on enabling effective and efficient support to CEFTA Parties in collecting and exchanging information on their services regulatory policies to enable maximum use of data with minimum efforts. The CEFTA Services Regulatory Database and WTO I-TIP Services are serving as key tools that provide data on applied trade in services regulation in CEFTA Parties to the external users. Among the responsibilities of the CEFTA Secretariat is to (i) maintain and develop the CEFTA Services Regulatory Database in line with the WTO methodology and rules; (ii) gather updates on the existing data from CEFTA Parties; (iii) transferring information to the WTO Secretariat based on the agreed methodology at the technical level, at least once a year; (iv) update the database; and (v) promote the database for users.

During the CEFTA Subcommittee meeting on Trade in Services that was held between 23-24 November 2022 in Brussels, it was concluded that “the Subcommittee on Trade in Services welcomes continued cooperation between CEFTA and WTO and instructs the Secretariat to coordinate with WTO Secretariat in collecting the updated information on services regulatory policies through independent consultants in CEFTA Parties based on the agreed methodology.”

²https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/communication_on_wb_economic_and_investment_plan_october_2020_en.pdf

³ Please access <https://transparency.cefta.int/SRD>

⁴ Common Regional Action Plan 2021-2024: <https://cefta.int/legal-documents/#1606206000974-f4546f02-81d6>

⁵ Additional Protocol 6 on Trade in Services: <https://cefta.int/legal-documents/#1463498231136-8f9d234f-15f9>

1.5 Related programmes and other donor activities

The work will be closely coordinated with other initiatives and EU funded actions in the region in relation to the implementation of the work programme of CEFTA Bodies, based on Chairmanship priorities:

- EU support to trade facilitation and trade in services implemented by GIZ;
- EU support to strengthening regional cooperation and the development of a competitive Regional Economic Area (IPA) implemented by RCC and World Bank;
- Strengthening the involvement of the business community to the MAP REA (IPA) implemented by Western Balkan Six Chamber Investment Forum;
- USAID REG II that would deal with trade facilitation measures and the implementation of trade facilitation policies within the CEFTA Parties;
- IFC dealing with the coordination of the Trade Facilitation Committees within the CEFTA Parties;

2. OBJECTIVE, PURPOSE & EXPECTED RESULTS

2.1. Overall objective

The overall objective of the Action Grant of which this contract is a part is to (i) increase socioeconomic growth in the region thanks to increased trade and investment; (ii) foster the implementation of the EU acquis pertaining to the EU Single Market in order to accelerate accession to the EU; and (iii) enhance good neighbourly relations through supporting the creation of Regional Trade Area based on CEFTA 2006, as part of the Common Regional Market Action Plan (CRM AP) (specific objective).

2.2. Purpose

The purpose of this contract is to update the CEFTA Services Regulatory Database by collecting the information on regulatory measures (e.g. laws, regulation, administrative measures) in selected services sectors according to the agreed methodology with the WTO.

2.3. Results to be achieved by the Contractor

The results to be achieved by the contractor are as follows:

Detailed updated information on regulatory measures in selected services sectors based on questionnaires provided by the CEFTA Secretariat and in line with the CEFTA Services Regulatory Database collected and verified by CEFTA Parties.

3. ASSUMPTIONS & RISKS

3.1. Assumptions underlying the project

CEFTA Parties are committed to verify collected data.

The Secretariat of the World Trade Organisation provides technical support to expert in order to assure quality of collected data.

3.2. Risks

The potential risk is that all regulatory measures related to selected services is not available online or in English language. To mitigate this risk, the Contractor is expected to contact CEFTA Parties in order to obtain necessary documents and to secure the translation from original to English language, if needed.

4. SCOPE OF THE WORK

4.1. General

4.1.1. Description of the assignment

The Contractor will be tasked to assist CEFTA Secretariat in supporting the work of the CEFTA Subcommittee on Trade in Services to update the CEFTA Services Regulatory Database (available here: <https://transparency.cefata.int/SRD>) and developed based on the WTO's Services Trade Policy Database (available here: <http://i-tip.wto.org/services/SearchApplied.aspx>)

Following the previous exercise that took place during 2018-2019 when the information was collected for the first time from CEFTA Parties on the existing services regulatory policies based on the methodology and questionnaire provided by WTO, CEFTA Secretariat in cooperation with the WTO Secretariat is initiating a new exercise on collecting updated information on services policies. This mainly has to update data collected in 2019 and to align all the relevant information at the same level in the CEFTA and WTO databases.

Based on the exchange of letters that took place in March 2021 between the CEFTA Secretariat and WTO Secretariat, it was agreed to cooperate on enabling effective and efficient support to CEFTA Parties in collecting and exchanging information on their services regulatory policies to enable maximum use of data with minimum efforts. The CEFTA Services Regulatory Database and Services Trade Policy Database are serving as key tools that provide data on applied trade in services regulation in CEFTA Parties to the external users.

4.1.2. Geographical area to be covered

The assignment will cover the CEFTA Parties.

4.1.3. Target groups

The main beneficiary is the CEFTA Secretariat and the CEFTA Subcommittee on Trade in Services. The final beneficiaries are the CEFTA Parties.

4.2. Specific work

The specific task of the expert would be as follows but not limited to:

- a) Kick-off meeting

During the kick-off meeting, the CEFTA Secretariat will provide an overview of already implemented activities of the Secretariat and CEFTA Parties in the relevant for the assignment areas, including all questionnaires to be completed by the contractor (a sample provided in the annex to this Terms of Reference). The contractor is expected to deliver a work programme with methodology and timeline of activities to be used during the engagement. Contractor and CEFTA Secretariat are expected to agree on the cut off date for all regulatory measures to be taken into account.

- b) Collection of updated data for the CEFTA Services Regulatory Database

Based on the provided available data (questionnaires and answers) from CEFTA and WTO Secretariats, the Contractor is firstly expected to identify whether this data is still up to date, that is whether relevant regulatory measures (e.g. laws, regulation, administrative measures) providing basis for the data is not amended, replaced, withdrawn or changed in any way. In case there are relevant changes to the identified regulatory measures and/or there are other, not specified regulatory measures relevant for a question in

the questionnaire, the Contractor will acquire necessary data based on the new or amended measures and update data in the questionnaires. Only official sources can be used. Translation from the original, where needed, has to be secured by the Contractor.

The Contractor is expected to review **one general questionnaire** for each CEFTA Party containing information on acquisition and/or rental of land and real estate, notification and screening of foreign investment, payments and transfers, mode 4 and business visas, as well as questionnaires for the following **21 sector/subsectors questionnaires for each CEFTA Party** containing available 2019 data and to update outdated answers and complement in certain instances, providing accurate comments and an updated legal basis.

- 1) Business Services
 - a) Professional services
 - i) Legal services
 - ii) Accountancy services
 - iii) Architectural services
 - iv) Engineering services
 - b) Computer and related services
- 2) Communication services
 - a) Telecommunications
 - i) Fixed
 - ii) Mobile
 - iii) Internet
- 3) Construction and related engineering services
- 4) Distribution services
 - a) Wholesale
 - b) Retail
- 5) Financial services
 - a) All insurance and insurance-related services
 - i) Life, accident and health insurance services
 - ii) Non-life insurance services
 - iii) Reinsurance and retrocession
 - b) Banking services
- 6) Health services
- 7) Tourism services
 - a) Hotels
 - b) Travel agencies and tour operator services
 - c) Tourist guides services
- 8) Transport services
 - a) Air transport services
 - i) Freight transportation
 - b) Maritime transport services⁶
 - i) Freight transportation

Additionally, the Contractor is expected to fill-out the **following 5 sector/sub-sectors questionnaires for each CEFTA Party**. The Contractor is expected to carry out the necessary research to identify relevant regulatory measures for these sectors and ensure that the information provided is current, and that the regulations that it refers to are applied, in practice.

- Transport services
 - Road freight services
 - Rail freight services
- Audio-visual services
- Communication services
 - Postal services

⁶ Where applicable

- Courier services

The Contractor will be available for follow-up questions and additional clarifications where required. The compilation of data is the solely responsibility of the Contractor.

During the assignment, the Contractor is expected to be available for consultations with the CEFTA Secretariat, and through the CEFTA Secretariat with experts of the World Trade Organization, International Trade Center and GIZ. This would involve exchange of emails, meetings, submission of findings and documents for further coordination. If it proves necessary, the Contractor will be asked to revise, add, or complete the answers from the questionnaire, provide explanations and cross-check the validity of information provided.

The consultation of the CEFTA Contact Point or relevant ministries through CEFTA channels for this assignment is not envisaged, unless for the purpose of the obtaining relevant regulatory measures. All communication with CEFTA Parties has to be previously agreed with CEFTA Secretariat.

c) Cooperation in the process of verification of information

All data collected by the Contractor will be subject to a review process by the WTO team that will provide feedback to the Contractor to ensure the consistency and comprehensiveness of the information. The Contractor is expected to take the feedback into consideration, answer questions as well as provide clarifications to comments, and upload updated questionnaires to the survey portal. The Contractor commits to answer promptly any clarification questions regarding their answers to any of the above-mentioned sectors. This process is repeated until satisfactory quality is reached. Once the information from the questionnaire is received and internally checked, it will be submitted to the relevant representatives of the CEFTA Party for the final verification. The Contractor is expected to answer questions, provide clarifications to comments, take part in ad-hoc consultations with the representatives of the CEFTA Parties, if needed.

All communication with CEFTA Parties has to be previously agreed with CEFTA Secretariat.

g) Participation at the meeting of the Subcommittee on Trade in Services

The Contractor is expected to participate at the meeting of the CEFTA Subcommittee of Trade in Services (planned for November/December 2023) and/or a specially organised events to present the work done under this contract. Travel costs; if any, will be borne by the Contractor.

Key deliverables:

- Questionnaires completed for general questions and 26 sectors/subsectors for each CEFTA Party reflecting the currently applied regulatory measures (e.g. laws, regulation, administrative measures), clearly noting the source of data collected, including relevant provisions of regulatory measure, as well as copies of the relevant regulatory measure, either by providing the electronic link to the specific measure or if that is not available providing a PDF copy of the document cited.
- All data collected is validated by the relevant institutions of the CEFTA Parties.

All deliverables should be submitted in English and in electronic copy.

The detailed work programme, methodology and timeframe have to be submitted at the kick-off meeting.

4.3. Project management

4.3.1. Responsible body

The CEFTA Secretariat will be responsible for the management of the contract.

4.3.2. Management structure

The project will be overseen by the Technical Expert for Trade in Services. The Director of the CEFTA Secretariat and Senior Technical Expert for Trade in Services will oversee the implementation of the contract.

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

No facilities will be provided by the Contracting Authority.

5. LOGISTICS AND TIMING

5.1. Location

The Contractor will be home based.

5.2. Start date & period of implementation of tasks

The intended starting date is June 2023 and the period of implementation of the contract will be until 31 December 2023.

Please see Articles 19.1 and 19.2 of the special conditions for the actual start date and period of implementation.

6. REQUIREMENTS

6.1. Staff

Note that civil servants and other staff of the public administration of the CEFTA Parties, or of international/regional organisations based in the CEFTA Parties, 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.

6.1.1. Key experts

Key experts are defined, and they must submit CVs and signed statements of exclusivity and availability. All experts who have a crucial role in implementing the contract are referred to as key experts. The profile of the key experts for this contract should be as follows:

Key expert: Team Leader – Senior Legal Expert

Qualifications and skills:

- University degree in law
- Postgraduate degree is an advantage;
- Proficiency in English and in one of the languages of the CEFTA Parties;
- Full computer literacy.

General professional experience:

- At least 15 years of professional experience in legal and/or consultancy services;

Specific professional experience:

- At least 10 years of professional experience in the fields related to international trade law and/or other areas of law relevant for this assignment;
- Familiarity with WTO/GATS and CEFTA rules and procedures is an advantage;
- Proven record of previous work in the CEFTA is an advantage.

Key expert: Services Regulatory Expert 1

Qualifications and skills:

- University degree in law;
- Postgraduate degree is an advantage;
- Proficiency in English and in one of the languages of the CEFTA Parties;
- Full computer literacy.

General professional experience:

- At least 5 years of professional experience in legal and/or consultancy services;

Specific professional experience:

- At least 3 years of professional experience in the fields related to international trade law and/or other areas of law relevant for this assignment;
- Proven record of previous work in the CEFTA is an advantage.

Key expert: Services Regulatory Expert 2

Qualifications and skills:

- University degree in law;
- Postgraduate degree is an advantage;
- Proficiency in English and in one of the languages of the CEFTA Parties;
- Full computer literacy.

General professional experience:

- At least 5 years of professional experience in legal and/or consultancy services;

Specific professional experience:

- At least 3 years of professional experience in the fields related to international trade law and/or other areas of law relevant for this assignment;
- Proven record of previous work in the CEFTA is an advantage.

6.1.2. Other experts, support staff & backstopping

CVs for experts other than the 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. The contractor shall select and hire other experts as required according to the needs. The selection procedures used by the contractor to select these other experts shall be transparent, and shall be based on pre-defined criteria, including professional qualifications, language skills and work experience.

The costs for backstopping and support staff, as needed, are considered to be included in the tenderer's financial offer.

6.2. Office accommodation

Office accommodation for the expert working on the contract is to be provided by the contractor.

6.3. Facilities to be provided by the Contractor

The contractor shall 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 CEFTA Secretariat as part of this service contract or transferred to the CEFTA Secretariat at the end of this contract.

7. REPORTS

7.1. Reporting requirements

The contractor will submit the following reports in English language in one original via email:

- **Inception Report** of maximum 12 pages to be produced after 21 days from the start of implementation. In the report the contractor shall describe detailed work plan, methodology of work and timeline for proposed activities.
- **Draft final report** (main text, as well as annexes with all outputs envisaged in 2.3.) This report shall be submitted no later than one month before the end of the period of implementation of tasks.
- **Final report** with the same specifications as the draft final report, incorporating any comments received from the parties on the draft report. The deadline for sending the final report is 10 days after receipt of comments on the draft final report. The report shall contain all outputs defined in 2.3. Final report must consist of a narrative section and a financial section along with the corresponding invoice accompanied by an expenditure verification report.

7.2. Submission and approval of reports

The report referred to above must be submitted to the project manager identified in the contract. The project manager is responsible for approving the reports.

8. MONITORING AND EVALUATION

The contractor will ensure internal quality control during the implementing and reporting phase of the assignment. The quality control should ensure that the draft reports comply with the above requirements and meet adequate quality standards before sending them to stakeholders for comments.

All deliverables shall be reviewed by the staff of the CEFTA Secretariat. The approved final report (output) will be subject to a quality assessment by the CEFTA Secretariat.

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