

# TERMS OF REFERENCE

## for

### Legal Advisory Services

Enabling Digital Governance in Serbia (P164824)

#### **a. Background Information**

Digitalization is increasingly becoming the backbone of any and all functional restructuring in the public sector, an objective driver of change management and a precondition for transformative development. Going digital, being a horizontal measure, is also accelerating the attainment of Sustainable Development Goals (in further text: SDG). While it directly falls under SDG 16, e-governance is contributing to building stronger institutions – effective, accountable and transparent – at all levels.

The Government of Serbia, elected in June 2017, has heavily prioritized digital transformation of the national economy and state administration. The Prime Minister's Keynote Address before the Parliament stressed digitalization and education as the most important catalysts of innovations, competitiveness and growth for Serbia in the coming years. It also stressed the need for a rapid digitalization of public administration and provision of integrated, secure and citizen-focused electronic services. This political support has materialized in August 2017, when the new Government formed the Office for IT and e-Government (OITeG) and appointed the Prime Minister as head of the Council for Innovative Entrepreneurship and Information Technologies (IT Council).

In addition, the Government of Serbia has requested assistance of the World Bank in supporting the reform efforts, through a loan. To this effect, the World Bank has initiated the Enabling Digital Governance Project (EDGE). The project, expected to be launched in April 2019, aims at contributing to development of the digitalization in Serbia, through implementation of the following components:

#### *Component 1: Foundations for Digital Service Delivery*

The objective of this component is to establish the necessary cross-cutting foundations to support the use of ICTs in the provision of public services to citizens, and businesses, including inter alia, regulations, standards, and digital infrastructure.

#### *Component 2. Transforming Services for Citizens, Business and Government*

The objective of this component is to support re-engineering, digitalization, and piloting of selected administrative e-services. It will support improvements in back-office processes to reduce administrative burdens and increase efficiency of administrative service delivery to citizens and businesses.

#### *Component 3. Digital Skills Development, Institutional Strengthening and Change Management*

Activities under this component will focus on transforming the provision of administrative services to citizens and businesses, which will result in the change of the way public servants do their work as well as the way citizens and businesses interact with the administration. The key result of this component is enhanced capacity for project management and institutional coordination to achieve project results. This component will include strategic frameworks to help all stakeholders to understand, commit and successfully develop digital skills, implement change and, by promoting digital skills and changes, contribute to further institutional strengthening which will bring major benefits to citizens and business.

For the purposes of effectively managing and coordinating EDGE and future projects with IFI financing, the Project Implementation Unit (PIU) has been founded at the OITeG.

Following adoption of the EDGE project Concept Note, the World Bank has requested services of UNDP in contracting the relevant experts for producing baseline studies, assessments and other

documentation needed for withdrawing the loan. The Legal Expert created the High level legal analysis concerning the e-Government regulatory framework, based on the following requirements: to analyze the current legislation which regulates e-government in Serbia, to identify missing (primary and secondary) legislation which should be adopted, and to review the existing analytical work related to regulatory and legislative framework for e-government.

This High level legal analysis includes:

1. Inventory of current primary legislation and adopted secondary legislation, with a brief overview on the status of implementation, suggestions for alignment with EU legislation and governmental institutions responsible for implementation of each law.
2. Inventory of the missing secondary legislation, that need to be adopted, but are still pending, together with suggestions for alignment with EU legislation, governmental institutions responsible for adoption of each secondary legislation and an indication if some of them are due to be adopted by the government.
3. List of EU legislation which will require further adjustments of the Serbian legislative framework for e-government
4. List of legislation pertaining to e-government which requires immediate government attention

**b. Objective**

The objective of the assignment is to secure regulatory and legal environment necessary for improvement of access, quality and efficiency of e-Government in Serbia.

This will be achieved by:

1. Enhancing compliance with EU accession requirements by providing support in development process of the missing legal acts, which directly influence and regulate e-Government in Serbia compliant to relevant EU regulations
2. Monitoring the process of preparation and implementation of new legislation closely related to e-Governance on quarterly basis by reviewing documents, preparing suggestions and providing opinions to assure the legislations' compliance with EU regulations

**c. Scope of Work**

Following the work of Legal expert, who delivered the High level legal analysis, the following tasks will be the subject of the engagement of a firm that will perform the role of Legal Consultant:

1. To enhance compliance with EU accession requirements by providing support in development process of the missing legal acts and monitor the process of their implementation and adoption, which directly influence and regulate e-Government in Serbia compliant to relevant EU regulations as listed in the following table, which will be updated and submitted by the consultant within the first quarterly report of the assignment:

	Description of the Bylaw	Legal Ground	Responsible institution	Deadline	Status
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1	Manner of the insight in the registers/data bases, manner of the acquiring, processing and submitting/delivering the data that could be found in the electronic registers/data bases that are needed for the purposes of administrative procedure	Article 11 Paragraph 9 of the Law on E-Government	Ministry of State Administration and Local Self-Government	October 14, 2018	Not Adopted.
2	Detailed Conditions, measures and manner of the authorization for transfer of the data and electronic documents outside the Republic of Serbia	Article 12 Paragraph 4 of the Law on E-Government	Ministry of Justice and Office of the Council for National Security and Secret Document Protection	October 14, 2018	Not Adopted
3	Manner of providing the payment services (acceptance of the payment instruments, money transfer, other payment services) pursuant to the law that regulates payment services in relation to the paying the taxes and for the e-government services through the e-government Portal	Article 22 Paragraph 6 of the Law on E-Government	Government of the Republic of Serbia	October 14, 2018	Not Adopted
4	Conditions concerning the maintenance and development of the State center for management and storage of the data	Article 29 Paragraph 5 of Law on E-Government	Government of the Republic of Serbia	October 14, 2018	Not Adopted
5	Type of trust services that state body could provide, manner of providing of such service, and detailed determination of the procedure for providing of such trust services	Article 37 Paragraph 2 of the Law on E-Document, E-Identification and Trust Services in E-Commerce	Government of the Republic of Serbia	Not Determined	Not Adopted.

6	Conditions concerning the procedure related to the validation of the qualified e-signature and qualified e-seal	Article 48 Paragraph 4 of the Law on E-Document, E-Identification and Trust Services in E-Commerce	MTTT	October 27, 2018 (12 months from the day of the law entering in force)	Not adopted.
7	Detailed conditions related the provision of the service of qualified validation of e-signatures and e-seals	Article 49 Paragraph 2 of the Law on E-Document, E-Identification and Trust Services in E-Commerce	MTTT	October 27, 2018 (12 months from the day of the law entering in force)	Not adopted.
8	Detailed conditions related to the qualified electronic time stamps	Article 52 Paragraph 2 Law on E-Document, E-Identification and Trust Services in E-Commerce	MTTT	October 27, 2018 (12 months from the day of the law entering in force)	Not adopted
9	Detailed conditions concerning the qualified electronic delivery and the content of the certificate of reception of the electronic message by provider of service and certificate on delivery of electronic message to the recipient	Article 55 Paragraph 7 of the Law on E-Document, E-Identification and Trust Services in E-Commerce	MTTT	April 27, 2019	Not adopted
10	Detailed conditions concerning the check of compromising electromagnetic radiation and manner of the risk assessment from the leaking of the data through compromising electromagnetic radiation	Article 22 Paragraph 6 of the Law on Cyber Security	Government upon proposal of the Ministry of Defense	August 5, 2016	Not adopted.

11	Technical conditions for cryptographical algorithms, parameters, protocols and information goods in the field of crypto protection that are used in Republic of Serbia in cryptographic products for the purposes of protection of secrecy, integrity, authenticity, i.e. data integrity	Article 23 Paragraph 3 of the Law on Cyber Security	Government upon proposal of the Ministry of Defense	August 5, 2016	Not Adopted.
12	Conditions concerning the cryptographical products which are used for transfer and keeping of the data which are determined as secret	Article 24 Paragraph 2 of the Law on Cyber Security	Government upon proposal of the Ministry of Defense	August 5, 2016	Not Adopted.
13	Content of the request for issuing of the authorization for cryptographic product, manner of issuing of the authorization and content of the register of issued cryptographic products	Article 25 Paragraph 10 of the Law on Cyber Security	Government upon proposal of the Ministry of Defense	August 5, 2016	Not Adopted.
14	Manner of running of the Register of crypto products, crypto material, rules and regulations, and entities that performs the crypto protection activities	Article 27 Paragraph 4 of the Law on Cyber Security	Government upon proposal of the Ministry of Defense	August 5, 2016	Not Adopted.
15	Criteria concerning the identification of the critical infrastructure and manner of reporting	Article 5 Paragraph 3 of the Law on Critical Infrastructure	Government	May 21, 2019	Not Adopted
16	Methodology, manner of drafting and content of the Critical Infrastructure Operators Security plan for risk management	Article 8 Paragraph 3 of the Law on Critical Infrastructure	Ministry of Interior	May 21, 2019	Not Adopted

17	Manner and program for the exam related to the focal point officer	Article 9 Paragraph 7 of the Law on Critical Infrastructure	Ministry of Interior	May 21,2019	Not Adopted
18	Determination of the information that could be presented in standardized icons in electronic form and procedure related to the determination of such icons	Article 21 Paragraph 9 of the Law on Personal Data Protection	Data Protection Commissioner	August 21, 2019	Not Adopted
19	Form and manner of notification of the personal data breach notification	Article 52 Paragraph 9	Data Protection Commissioner	August 21, 2019	Not Adopted
20	Form and manner of the running of the register of data protection officers (DPO)	Article 56 Paragraph 12	Data Protection Commissioner	August 21, 2019	Not Adopted
21	Criteria for accreditation of the certification body for issuance of the data protection requirements compliance certificate)	Article 78 Paragraph 1 Point 18) and Article 62 Paragraph 3	Data Protection Commissioner	August 21, 2019	Not Adopted
22	Criteria for certification (issuance of the data protection requirements compliance certificate)	Article 78 Paragraph 1 Point 16)	Data Protection Commissioner	August 21, 2019	Not Adopted
23	Form and manner of the Register related to the data controllers/data processors that breached the provisions of the Law	Article 78 Paragraph 4	Data Protection Commissioner	August 21, 2019	Not Adopted
24	Form on the complaint related to the personal data breach	Article 78 Paragraph 5	Data Protection Commissioner	August 21, 2019	Not Adopted

2. To monitor the process of preparation and implementation of new legislation closely related to e-Governance by reviewing documents, preparing suggestions and providing opinions to assure the legislations' compliance with the EU regulations.
3. To ensure that any new legislation that could have an impact to the eGovernment agenda contains acceptable provisions in line with the general e-Government strategy and present legislation.
4. To provide continuous advisory the OITEG Director related to legal and regulatory issues governing the work of the OITEG and e-Government agenda.

5. To provide any other legal support related to the new legislation on e-Government and other aspects of the digitalization in Serbia on a needs basis
6. To keep regular monthly meetings with PIU and OITeG, where will be discussed all relevant topics concerning the project.

#### **d. Deliverables and Timelines**

The Consultants will be responsible for the following deliverables:

<b>No.</b>	<b>Deliverable</b>	<b>Deadline</b>	<b>Payment</b>
1	Final report on adoption of missing legal acts	May 2023	10%
2	<p>Quarterly reports on preparation, implementation, and applicability of e-Government relevant regulations. The reports should cover progress with all tasks defined under the scope of service:</p> <ol style="list-style-type: none"> <li>1. providing support in development and monitoring the process of implementation and adoption of 24 missing legal acts, which directly influence and regulate e-Government in Serbia compliant to relevant EU regulations</li> <li>2. monitoring of preparation and implementation of new legislation closely related to e-Governance as well as those that might have e-Governance provisions by reviewing documents, preparing suggestions and providing opinions to assure the legislations' compliance with EU regulations</li> <li>3. review of activities during the period, list of meetings and advisory support provided to OITEG, etc.</li> </ol>	Every quarter from the start of engagement until December 2023	e.g 90% divided by 18 reports = 5%

All deliverables must be submitted in English and Serbian in hard copy and electronic form.

All deliverables will be quality reviewed and approved by PIU within OITeG in consultation with the World Bank.

All deliverables developed under the contract belong to OITeG and OITeG has the right to transfer the ownership to national partners.

The progress and reports will be discussed at least once per month on regular meetings. If there is a need, OITEG may ask for more often meetings to discuss an ongoing and planned legal or regulatory changes.

#### **e. Qualifications**

The Consultant selected to undertake the assignment must be a legal entity and fulfil the following minimal requirements listed in 2 Parts:

### **Part I: General, Team and Technical requirements:**

- Adequate number of law professionals (preferably more than 10) which have a track record of providing advice under similar assignments and with at least 4 years university degree in public policy, law or similar fields;
- Minimum 1 consultant in the team that is an expert in public policy or law with relevant and proven professional experience in IT related projects in last three years;
- Minimum 2 consultants in the team with at least 10 years of professional experience related to Serbian legal framework for e-government;
- Documented and proven knowledge of the Serbian legal framework for e-government, information society, electronic communications, investment and business law, supported by proofs of working experience. As a proof, the Consultant shall prepare a table listing following information: name of the relevant assignments, short scope of work, year of contract's implementation, country/region, contact reference (name, e-mail, phone number);
- Fluency of all consultants engaged for the project in English, both spoken and written.

In addition, the Consultant firm will engage outside experts who will be engaged on need basis and cover some specific aspects of e-Government transformation ( e.g. Cybersecurity, GDPR, etc.).

### **Part II: General Data Protection Regulations**

With EU General Data Protection Regulation (EU 2016/679, approved on 14.04.2016 by European Parliament and enforced on 25.05.2018 – in further text GDPR), the most important basic principles of personal data processing are defined. This Part specifies privacy-related requirements for data Controllers and data Processors, which are mandatory part of every legal entity, since they are holding the responsibility and accountability of personal data processing.

To that effect, the Consultant firm, as a legal entity, must fulfill three (3) criteria to prove compliance with the GDPR requirements:

1. To provide written evidence of the fulfillment of all criteria laid down in GDPR Chapter 3 “Rights of the data subject”, in all Articles, starting with Article 12 and finishing with Article 23 (including Article 23)
2. To provide written evidence of the fulfillment of all criteria laid down in GDPR Chapter 4 “Controller and Processor”, Section 1, in Article 30 “Records of processing activities”
3. As evidence of compliance with the criteria set out in GDPR Chapter 4 “Controller and Processor”, Section 2, in Article 32 “Security of processing”, the Consultant firm must provide an accredited certification for “ISO 27001:2013 along with recommendations for personal data protection.”

#### **f. Evaluation**

The Consultant which obtains the highest score during evaluation of expressions of interest will be invited to submit technical and financial proposals.

#### **g. Timeframe and duration**

Contract duration: November 2019 – April 2024

#### **h. Terms of Payment**

The Contract will be the Standard World Bank Lump Sum Contract for Small Assignments. The payments for services will be based on the deliverables / reports approved by the Project Coordinator. The Contract costs will include remuneration and reimbursable costs referring to the assignment.

#### **i. Conflict of Interest**

The engaged Consultant must not be involved in any other related activity to this Project.