



Open Call for Consultancy Services

Alignment of national legislation with GDPR requirements in each WB economy and preparation of roadmap(s) to ensure smooth and effective enforcement

| | |
|-------------------------------|--|
| TERMS OF REFERENCE: | Support to RCC Secretariat to assess the state of play in each Western Balkan economy in aligning national legislation with EU acquis in the area of data protection, in particular with the General Data Protection Regulation (GDPR) ¹ to support preparation of the roadmap(s) for effective implementation of GDPR requirements |
| RCC Department: | Programme Department |
| Number of Consultants: | 7 (1 international expert and one national expert from each WB economy) |
| Reporting to: | RCC Secretariat |
| Duration: | 15 April – 30 July 2020 |
| Eligible: | Respective consulting companies, consortia of individual consultants |
| Reference Number: | 020-020 |
| Application Deadline: | 26 March 2020 |

I. PURPOSE

The overall objective of the consultancy is to support the Western Balkans region to achieve full compliance with the GDPR requirements and ensure smooth and effective enforcement. The consultancy aims to provide expert advice on the main challenges in GDPR implementation, reinforce the capacities of relevant institutions and identify the impact of GDPR requirements for businesses in Western Balkans.

II. BACKGROUND

¹ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)

At the Trieste Summit of the Berlin Process (12th July 2017), Western Balkan leaders endorsed the Multi-annual Action Plan for a Regional Economic Area (MAP REA), prepared and coordinated by RCC. The MAP REA puts forward a structured agenda for regional economic integration promoting further trade integration, introducing a dynamic regional investment space, facilitating regional mobility, and creating a digital integration agenda. It stems from the commitments undertaken within the framework of the Central European Free Trade Agreement and South East Europe (SEE) 2020 Strategy and is based on EU rules and principles as reflected in the Stabilisation and Association Agreements.

The MAP REA agenda was introduced with an objective to spur economic growth and foster regional cooperation among Western Balkan economies. Activities that are foreseen within MAP REA have the potential to improve the attractiveness of the region, create value chains across borders, boost intraregional trade and produce employment opportunities to tackle brain drain. Throughout the last three years of its implementation, MAP REA has faced both achievements and impediments, with the majority of measures already rolled out, while others are to be implemented in the course of a year. Although with a mixed track record, MAP REA has brought notable results which should constitute a basis for further development of a reinvigorated regional development agenda.

Digital Integration is one of the components of MAP REA and measures therein aim to integrate the region into the pan-European digital market on the basis of a future-proof digitisation strategy, an updated regulatory environment, improved broadband infrastructure and access as well as digital literacy. Embracing digital transformation, ensuring greater availability of digital infrastructure, and enabling better regulatory framework and level playing field can help our region grow, increase the convergence rates with the EU, improve the business environment and encourage cross-border services, thus offering better life for the citizens.

In addition, Digital Agenda for Western Balkans launched on 25-26 June 2018 aims to support the digital transformation, improve service delivery for the citizens and businesses and help Western Balkans in the preparations to integrate better into the EU Digital Single Market.

The European Commission has set a goal to make the EU's single market fit for the digital age by adopting a Digital Single Market Strategy. The creation of Digital Single Market is one of the most important reasons for revision of the EU framework regulating personal data protection and adoption of GDPR. GDPR was introduced in order to unlock online opportunities in Europe as well as to unify the rules on personal data protection in all EU MS. Western Balkans economies are at different stages of alignment with GDPR. Only Kosovo^{*2} and Serbia transposed the GDPR into their legislation, but they face many challenges in the implementation process.

II DESCRIPTION OF RESPONSIBILITIES

Objectives and scope of the assignment

² * This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence

The overall objective of the consultancy is to support Western Balkans economies to align with GDPR with an aim to ensure smooth and effective implementation of general data protection requirements. The analysis for each economy will feed into the preparation of the roadmap(s), tailor made based on each economy needs.

GDPR gives a baseline set of standards for companies that handle personal data of EU citizens to better safeguard the processing and movement of that data. From the company's perspective, GDPR requires that all companies which provide goods and services to EU citizens are subject to the regulation, no matter where they are located. As a result, GDPR has an impact on data protection requirements worldwide. At the same time, GDPR also makes it easier for the citizens to understand better how their data is being used and what are their rights regarding this matter.

For the purpose of this consultancy, A consulting company or consortia of individual consultants will be engaged. This assignment targets all Western Balkan economies.

The scope of services under this assignment includes the following:

1. Assessing the level of preparedness of each economy to ensure smooth and proper implementation of GDPR, including fully fledged analysis on the state of play of GDPR alignment in each economy;
2. Providing expert advice on potential next steps to ensure alignment and on main challenges connected with GDPR implementation through the preparation of roadmap(s) factoring the development and needs of each economy;
3. Providing expert advice on the implications GDPR requirements have for public and private institutions, including businesses.

Specific Tasks

The specific tasks specified herewith are:

- Map and analyse primary and secondary legislation related to general data protection as well as the state of play in aligning GDPR in a given economy;
- Assess the level of compliance with GDPR in case the process alignment is completed or it has started so that to ensure timely recommendations on the compliance level;
- Provide expert advice on legislative improvements needed to achieve full compliance with GDPR in each Western Balkan economy. The assessment should include identification of challenges in the implementation of GDPR as well as propose solution as appropriate;
- Identify all national structures/institutions responsible for general data protection in each Western Balkan economy;
- Assess the implications GDPR requirements have for public and private institutions, including businesses, while differentiating for each group the typology of implications;

- Map donor support in each Western Balkan economy in the area of general data protection and capacity building needs;
- Identify capacity building needs for all responsible institutions for policy formulation, legislative processes and enforcement;
- Prepare tailor made roadmap(s) for each economy based on each economy needs. The roadmap(s) should factor development in each economy in the area of data protection and contain concrete activities, including, but not limited to addressing alignment with GDPR requirements, smooth enforcement, capacity building, awareness raising, etc. The roadmap(s) should take into account the recently launched European Data Strategy as well as the upcoming review of the GDPR which may provide further useful elements in this regard.

Methodology

The team of experts is expected to come up with the best approaches for undertaking this task. However, the following guiding principles should be taken into consideration:

- i. Desk review of all existing reports and/or assessments relevant to the key tasks covered by these Terms of Reference;
- ii. Direct contacts with relevant institutions responsible for general data protection;
- iii. Any other methods applicable, including visits to each economy, if appropriate.

To achieve the objectives of these Terms of Reference, the experts may also establish direct communication with MAP REA Digital Component Contact Points (CCPs) and general data protection institutions to discuss and exchange views on the general context of strategy development processes in all Western Balkans economies. The RCC will provide contacts of all Digital CCPs and personal data protection officers, if requested.

Lines of Communication

The experts will report to the RCC Secretariat. After completion of activities as defined in the timeframe for the deliverables under these ToR, a detailed report will be prepared and sent to the RCC Secretariat for review and approval.

Timeframe

The engagement is expected to start on 15 April 2020. Up to 10 days will be used to map and analyse development connected with data protection in general and GDPR alignment in particular in each economy. Additional 20 days will be used by the international consultant to prepare the roadmap(s) for each economy to ensure smooth implementation of GDPR requirements.

| Deliverables | Due date |
|---|-----------------|
| Methodology and work plan | 30 April |
| Draft report(s) for each WB economy including all aspects | 30 May |

| | |
|--|---------|
| defined in these Terms of Reference | |
| Draft roadmap(s) for each economy | 30 June |
| The final report containing all economy reports as well as roadmaps for each economy. The final report should also incorporate all relevant comments provided by the RCC Secretariat and WB economies. | 30 July |

III COMPETENCIES

Expert Qualifications:

Criteria related to the experts delivering the service

| | |
|-------------------------------|---|
| Education: | <ul style="list-style-type: none"> ▪ Advanced degree in law, economics, business, or other areas directly related to the subject of work |
| Experience: | <ul style="list-style-type: none"> ▪ Minimum of 7 years of relevant experience in general data protection legislation in EU, GDPR; experience in working with government and/or EU institutions on developing strategic documents in the personal data protection area; ▪ Experience in working on general data protection implementation is an advantage; ▪ Proven analytical skills and ability to conceptualise and write concisely and clearly; ▪ In-depth knowledge of the economies covered by the assignment; ▪ Demonstrable experience in writing and reporting on complex multi-sector or multi-country strategy development and implementation (samples of work to be provided); ▪ Proven communication and presentation skills and ability to work in an environment requiring liaison and collaboration with multiple actors including government representatives, businesses, civil society institutions, donors and other stakeholders. |
| Language requirements: | <ul style="list-style-type: none"> ▪ Fluency in written and spoken English, as the official language of the RCC; ▪ Knowledge of other RCC languages is desirable. |

| | |
|---------------|--------|
| Other: | ▪ N.A. |
|---------------|--------|

Core Values

- Demonstrates integrity and fairness by modelling RCC values and ethical standards;
- He/she is independent and free from conflicts of interest in the responsibilities defined by the Terms of Reference;
- Displays cultural, gender, religion, race, nationality and age sensitivity and adaptability.

Core Competencies

- Demonstrates professional competence to meet responsibilities and post requirements and is conscientious and efficient in meeting commitments, observing deadlines and achieving results;
- Result-oriented; plans and produces quality results to meet the set goals, generates innovative and practical solutions to challenging situations;
- Communication: Excellent communication skills, including the ability to convey complex concepts and recommendations clearly;
- Team work: Ability to interact, establish and maintain effective working relations in a culturally diverse team;
- Ability to establish and maintain productive partnerships with regional and national partners and stakeholders.

IV QUALITY CONTROL

The expert should ensure an internal quality control during the implementing and reporting phase of the assignment. The quality control should ensure that the draft reports and deliverables comply with the above requirements and meet adequate quality standards before sending them to stakeholders for comments. The quality control should ensure consistency and coherence between findings, conclusions and recommendations. It should also ensure that findings reported are duly substantiated and that conclusions are supported by relevant judgment criteria.

The views expressed in the report will be those of the contractor and will not necessarily reflect those of the Regional Cooperation Council. Therefore, a standard disclaimer reflecting this will be included in the reports. In this regard, the expert may or may not accept comments and/or proposals for changes received during the above consultation process. However, when comments/proposals for changes are not agreed by the expert, he/she should clearly explain the reasons for his/her final decision in a comments table.

V. APPLICATION RULES

The application needs to contain the following:

- Technical Offer;
- Financial Offer.

Technical Offer

For companies and consortia of individual consultants:

- Company profile including a brief description (up to 2 pages) of the company. In case of a bidding consortium, the team leader should submit the profile of the consortium;
- Copy of Company's Registration Certificate (in case of consulting companies);
- In case of bidding consortia of individual consultants participating in this Call, they must indicate the members and show how the work is divided between them. Specifically, all members must name the team leader and authorise this member to represent the consortium and receive payments on behalf of the other members. A corresponding written authorisation, power of attorney must be attached to the bid;
- Financial records - company's balance sheet and profit-and-loss statement for the past 2 years (only in case of a bidding of consulting companies);
- CV of an expert(s), outlining relevant knowledge and experience as described in the Terms of References, along with contact details of referees;
- An outline work programme of a maximum of 5 pages that the applicant is applying for that will describe the main issues, sources of information to be used, timeline and methodology, including the financial offer. The Work Programme should include the initial outline of the content of the stud;
- List of references for relevant activities implemented over the past years demonstrating relevant experience in the subject matter;
- Application Submission Form (Annex I);
- Signed Statements of Availability (Annex II).

Financial Offer (Free format)

The financial offer should reflect the following:

- All figures should be expressed in EUR;
- VAT amount, if applicable, should be presented.

When preparing the financial offer, the applicant should take into account the following:

- Use a free format for the Budget providing the Global Price for the work to be provided.

NOTE:

When preparing the financial offer, the applicant should take into account the following:

- When preparing the financial offer, the applicant should take into account that the fee rates should be broadly consistent with those applicable in the region.

Submission of applications:

Applications need to be submitted by 26 March 2020, by 17:00 Central European Time to the following address ProcurementforRcc@rcc.int

- Please make sure that the application is submitted in two separate folders one containing Technical Offer and the other Financial Offer. The documents should be submitted in a form of copies of the originals.

VI. EVALUATION RULES:

- The consultancy will be awarded to the highest qualified bidder based on the relevance of skills and expertise to this assignment;
- The applications are evaluated following these criteria:

| EVALUATION GRID | Maximum score |
|---|----------------------|
| A. Technical Offer (A.1+A.2+A.3) | 100 |
| A.1. Work experience, references list: Relevant work experience; evidence of other contracts of the size comparable with that of the tender; experience with clients comparable to the Contracting Authority. | 35 |
| A.2. Quality and professional capacity of the consultant(s): CV(s) satisfy the criteria set forth in the Terms of Reference, education and experience, demonstrate professional capacity and experience required. | 35 |
| A.3 Quality of the concept note: An outline of work programme describing the main issues, information, data sources, research and analytical tools to be employed by the author, as well as the timeline. | 30 |
| B. Financial Offer/ lowest price has maximum score | 100 |

Score for offer X =

A: [Total quality score (out of 100) of offer X / 100] * 80

B: [Lowest price / price of offer X] * 20

In addition to the results of the technical and financial evaluation, competency-based interview will be held with the selected bidder.

Information on selection of the most favourable bidder

The RCC Secretariat shall inform candidates and bidders of decisions reached concerning the award of the contract as soon as possible, including the grounds for any decision not to award a contract for which there has been competitive tendering or to recommence the procedure.

Standard letter of thanks for participation to unsuccessful bidders shall be sent within 15 days after the contract is signed with the awarded bidder.

The candidates and bidders wishing to receive a feedback may send a request within 15 days after receipt of the standard letter of thanks.

The request may be sent to the e-mail address ProcurementforRcc@rcc.int or to the address of the RCC Secretariat:

Regional Cooperation Council Secretariat
Attention to: Administration Department
Building of the Friendship between Greece and Bosnia and Herzegovina
Trg Bosne i Hercegovine 1/V
71000 Sarajevo
Bosnia and Herzegovina

Appeals procedure

Bidders believing that they have been harmed by an error or irregularity during the award process may petition the RCC Secretariat directly. The RCC Secretariat must reply within 15 days of receipt of the complaint.

The appeal request may be sent to the e-mail address ProcurementforRcc@rcc.int or to the address of the RCC Secretariat:

Regional Cooperation Council Secretariat
Attention to: Administration Department
Building of the Friendship between Greece and Bosnia and Herzegovina
Trg Bosne i Hercegovine 1/V
71000 Sarajevo
Bosnia and Herzegovina

ANNEX I:

APPLICATION SUBMISSION FORM

REF: 020-020 Open Call for Consultancy Services

Subject:

One signed copy of this Application Submission Form must be supplied.

1 SUBMITTED by:

| | |
|---|--|
| | Name(s) and address(es) of the bidder submitting this tender |
| Full Company Name or Name of the legal entity/consortia of individual consultants | |

2 CONTACT PERSON (for this Call)

| | |
|-----------|--|
| Name | |
| Surname | |
| Address | |
| Telephone | |
| Fax | |
| e-mail | |

3 **DECLARATION**

[Company Name or Name of the Consortia of Individual Consultants] _____
hereby declares that we have examined and accepted without reserve or restriction the entire
contents of the Open Call for Consultancy 020-020.

And we are not in one of the following situations:

- (a) Bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (b) Have been convicted of an offence concerning their professional conduct by a judgment which has the force of res judicata;
- (c) Have been guilty of grave professional misconduct proven by any means which the Contracting Authority can justify;

- (d) Have not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the Contracting Authority or those of the country where the contract is to be performed;
- (e) Have been the subject of a judgment which has the force of res judicata for fraud, corruption, involvement in a criminal organisation or any other illegal activity.
- (f) Are civil servants or other agents of the public administration of the RCC Participants, regardless of the administrative situation, excluding us from being recruited as experts in contracts financed by the RCC Secretariat.

We offer to provide the services requested in the open call for consultancy on the basis of supplied documentation subject of this call, which comprise our technical offer and our financial offer.

| | |
|------------------|--|
| Name and Surname | |
| Signature | |
| Date | |