

TERMS OF REFERENCE

Job title:	National consultant on personal data protection
Duty station:	Chisinau, Moldova
Reference to the project:	"Improving the quality of Moldovan democracy through parliamentary and electoral support"
Contract type:	Individual Contract (IC)
Contract duration:	May – July 2016 (up to 30 working days)
Starting date:	11 May 2016

Job content**1. BACKGROUND**

The UNDP Programme "Improving the quality of Moldovan democracy through parliamentary and electoral support" aims to enhance parliamentary capacity in carrying out its core functions, thus contributing to viable democracy and open society in Moldova. The project adopts a comprehensive, long-term approach to parliamentary development including strengthening of the Parliament's law-making, representation and oversight roles.

The Republic of Moldova has already taken some steps towards implementing at national level the European principles and standards regards protection of personal data. Thus, after the ratification of the Council of Europe's Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, work has been initiated towards adopting the necessary legislative framework.¹

The approximation of the national institutional and legal framework to the European Union norms and standards is one of the key objectives of the Republic of Moldova, in light of the provisions of the Moldova–EU Association Agreement and the DCFTA.² Specifically, further steps have to be undertaken to comply with the EU principles regarding protection of persons in relation to the processing of their personal data. Existence of an independent supervisory authority is the prerequisite for ensuring the compliance with the principles and rules on the processing of personal data of individuals and protection of personal data.³

The first law on protection of personal data⁴ entered into force on February 15, 2007. The law sets the scope, main notions and basic requirements when processing personal data, setting the privacy and security regime for processing personal data and conditions of the cross-border transfer of personal data. The law provided as well for the establishing of a national competent authority to carry out the protection of personal data, the Centre for Personal Data Protection.⁵ The law has been recalled on April 14, 2012 and a new law, transposing the provisions of the European Parliament and Council Directive 95/46/EC of October 24, 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, entered into force in 2012.⁶

On October 10, 2013 the Parliament of the Republic of Moldova adopted the National Strategy for the protection of personal data 2013-2018 and an Action Plan for implementation of the strategy.⁷ The strategy sets the objectives and medium term goals to ensure an adequate level of protection of personal data, raising awareness on the measures required to implement personal data protection, explaining the rights of the subjects of personal data protection, including the steps necessary to develop and strengthen the legal and institutional framework.

¹ Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data:
<http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/108>

² http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2014.260.01.0004.01.ENG;
<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32006L0024;>

³ http://ec.europa.eu/justice/policies/privacy/docs/95-46-ce/dir1995-46_part1_en.pdf;
<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32001R0045;>
<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32002L0058>

⁴ <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=324657>

⁵ The Regulation, structure, staff-limit, mode of financing and the status of the National Centre for Personal Data Protection are set by Law 182-XVI, approved on the 10.07.2008.

⁶ <http://lex.justice.md/md/340495/>

⁷ <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=350516>

However, despite the steps taken by the Moldova authorities, the area of personal data protection requires further improvement, in particular when it comes to processing personal data by public entities, where further knowledge of principles should be enhanced. Additionally, the gaps that currently exist in the legislative framework and lack of mechanisms for implementation of the regulatory framework and promotion of the protection of personal data, could negatively affect the process of European integration of Moldova.⁸

The Parliamentary Committee on National Security, Defence and Public Order (CNSDPO), responsible for oversight of this area has not carried out any parliamentary oversight activities over the implementation of the related legislation, National Strategy for the protection of personal data for the years 2013-2018 and its implementation Action Plan.⁹

Hence, UNDP is looking to hire a national consultant to enhance the CNSDPO capacities to carry out the oversight on the implementation of the Law on Personal Data Protection, National Strategy for the protection of personal data for the years 2013-2018 and the Action Plan for implementation of the strategy, in line with the best EU and international practices.

2. OBJECTIVES

The expected output for the national consultant's assignment is to support the Parliamentary Committee on National Security, Defence and Public Order (CNSDPO) enhance its capacities to carry out parliamentary oversight.

The Consultant will also conduct a thorough analysis of the regulatory framework pertaining to the protection of personal data and identify systemic weaknesses that hinder the development of this sector. Additionally, the Consultant shall provide guidance to the CNSDPO in the process of assessing the current status of implementation of the Law and the National Strategy for the protection of personal data, assigned to the institutions with responsibilities for personal data protection.

Following the assessment, the national consultant will identify the backlogs in all the components of the Strategy and provide recommendations for improvement. The analysis will provide an overview of the available mechanisms to exercise the parliamentary oversight function and recommendations to strengthen this function.

In order to achieve the stated objective, the Consultant will have the following responsibilities:

1.1 Prepare a detailed work plan to be applied for respective assignment:

- Undertake a comprehensive desk review of the relevant national legal framework, policies and strategies on personal data protection. Get acquainted with Parliament Rules of Procedures and other internal and national regulations;
- Organize initial meetings with relevant Standing Committees to present the plan related to the assessment of the National Strategy for the protection of personal data.

1.2 Develop an informative brief presenting the findings of the analysis of the regulatory framework pertaining to the protection of personal data, identified systemic weaknesses that hinder the development of this sector and recommendations for improvement:

- The Consultant shall analyse the field legislation, including draft acts and implementation issues;
- Provide compatibility check of Moldovan legislation, including draft acts;
- Draft Table of Concordance and provide recommendations for further full harmonization with the EU acquis and International Treaties, with particular regard to proper implementation in line with Moldovan needs, capacities and legal system;
- The review of legislation will be concluded with a briefing note developed in close cooperation with the advisers to the CNSDPO, presenting the findings of the analysis of the regulatory framework, identified systemic weaknesses that hinder the development of this sector and recommendations for improvement that shall be submitted to the members of the CNSDPO.¹⁰
- Deliver a presentation of the main findings to the MPs members of CNSDPO and subsequently provide substantive support in carrying out oversight activities. (*draft inquiry letter on behalf of the CNSDPO to the relevant national authorities addressing the identified backlogs; provide guidance to the CNSDPO in organising parliamentary hearings with the participation of relevant national authorities*);
- Subsequently to collecting the feedback from the MPs members of CNSDPO, regarding the priority issues to be addressed, following the presentation of the legislation analyses, the consultant shall provide substantive support to the CNSDPO in organising public hearings (*develop a concept note, provide input as to the relevant CSOs that will be invited to attend, provide input as to the list of institutions to be invited to attend the hearing, prepare in close cooperation the agenda and briefing note for the members of the CNSDPO*)

⁸ http://www.soros.md/files/publications/documents/Studiu_Protectie%20date%20prsonale.pdf;
<http://datepersonale.md/md/rapoarte/>

⁹ Section 2, Monitoring, Law No. 229 of 10.10.2013

¹⁰ The list of legislation to be assessed shall be consulted with the Parliamentary Committee on National Security, Defense and Public Order

- 1.3 Develop a report on the progress of implementation of the Law on Personal Data Protection, the National Strategy for the protection of personal data and the Action Plan, providing recommendations for further improvement:
- Carry out a desk review of the Law on Personal Data Protection and the National Strategy on the protection of personal data for the years 2013-2018 and the Action Plan for implementation;
 - Assist the CNSDPO to carry out an assessment of the degree of progress in implementation of the Law, the National Strategy and the Action Plan on the protection of personal data¹¹;
 - Develop the methodology for overseeing the implementation of the Law, the Strategy and the Action Plan on Protection of Personal Data for review and approval of CNSDPO and UNDP. The methodology should offer a concrete roadmap on carrying the oversight activities by the CNSDPO vis-à-vis the implementation of the Law, the Strategy and the Action Plan on Protection of Personal Data;
 - Based on the approved methodology for overseeing implementation of the Law, the Strategy and the Action Plan on Protection of Personal Data, assist the CNSDPO in preparing a questionnaire to assess the level of implementation, organize parliamentary hearings with relevant state institutions in order to gather information on best practices and challenges in implementation of the Law, Strategy and Action Plan, as well as identify civil society organizations and other interest groups that could be invited for a public hearing to discuss preliminary findings of the CNSDPO vis-à-vis the implementation of the Law, the Strategy and the Action Plan on Protection of Personal Data. Based on the results of the consultation process, the expert will assist the CNSDPO in drafting the report with key findings and recommendations that will be submitted to Plenary Session for approval.
 - During the implementation of the assignment, the expert will provide CNSDPO with input on:
 - Provide substantive and analytical support to the CNSDPO in the process of conducting ex-post assessment of the Law on Protection of Personal Data, No. 133 of 08.07.2011, including preparation of relevant visits to the pertinent executive institutions;
 - Assessment of the oversight mechanisms and processes available to the National Centre for Personal Data Protection (NCPDP);
 - Review of the mechanisms for protecting personal data during data processing by public and private sectors, presenting the trends during the last year;
 - Prepare a concept and facilitate round table discussions to collect feedback on the draft Report, presenting the initial findings and recommendations to the members and staff of the CNSDPO;
 - Review the best EU and international practices in personal data protection during data processing by public and private sectors;
 - Assess CNSDPO's capacities and existing tools to carry out oversight of implementation of the personal data protection legislation and monitor the implementation of the National Strategy on the protection of personal data;
- 1.4 Develop a brief guideline for MPs describing the principles of carrying out activities that involve processing personal data.

3. KEY DELIVERABLES AND TENTATIVE TIMETABLE

	Deliverables	Tentative timeframe/deadline
1	A detailed Work Plan developed and submitted to the UNDP Democracy Programme and CNSDPO for consultations	May 13, 2016
2	Methodology for overseeing the implementation of the Law, the Strategy and the Action Plan on Protection of Personal Data. Informative brief presenting the findings of the analysis of the regulatory framework pertaining to the protection of personal data developed: <ul style="list-style-type: none"> • Analysis of the regulatory framework pertaining to the protection of personal data carried out; • Systemic weaknesses that hinder the development of this sector identified and recommendations for improvement, developed and submitted to the CNSDPO for feedback; • Substantive support in organising follow up activities related to the findings of the analyses of the legislative framework provided; • Substantive support to the CNSDPO in organising public hearings provided. 	May 23, 2016
4	A draft Report on the progress of implementation of the Law, the National Strategy for the protection of personal data and Action Plan, developed and submitted to the CNSDPO for feedback;	June 2, 2016
5	Comments and suggestions regarding the draft Report analysed and report completed based on received feedback;	June 9, 2016

¹¹ According to the criteria set in Law No. 229 of 10.10.2013

6	Final Report on the progress of implementation of the National Strategy for the protection of personal data and Action Plan, submitted to the CNSDPO and presented to the members of the Committee during committee sitting;	June 16, 2016
7	Substantive and analytical support to the CNSDPO in the process of conducting ex-post assessment of the Law on Protection of Personal Data, No. 133 of 08.07.2011, including preparation of relevant parliamentary and public hearings;	June 30, 2016
8	Brief guideline for MPs describing the principles of carrying out activities that involve processing personal data.	

4. Institutional arrangements:

The national consultant will work under the guidance of UNDP Parliamentary Specialist and Parliament for substantive aspects of the assignment, and under the direct supervision of the Senior Project Officer for administrative and financial aspects. The consultant will work closely with the Parliamentary senior management and parliamentary Committee on National Security, Defence and Public Order.

The Parliament will provide consultant with working space, access to Internet, printer and telephone line. Before submission of the final report, the consultant will discuss the draft documents with the parties involved (i.e. Parliament, UNDP and other stakeholders) so that final products reflect their comments.

Monthly outcomes and objectives for the consultancy will be agreed in advance and monitored by the Programme.

Language

All communications and documentation related to the assignment will be in Romanian and English.

The timeframe for this assignment is planned tentatively through May – July 2016.

5. Qualifications and skills required:

Academic Qualifications:

- University degree in Law, ICT, Social Sciences or other relevant fields.

Experience and Knowledge:

- At least 5 years of relevant professional experience in the public order sector and/or personal data protection;
- Experience in comparative analysis, research, assessment on the implementation of the international and national legislation and policies would be an asset;
- Experience in organizing fact finding field visits and/or public hearings at the Parliament or Government level would be a big advantage.

Abilities:

- In-depth knowledge of national policies and legislation on personal data protection;
- In-depth knowledge and understanding of the security sector in general and in Moldova specifically;
- Strong analytical and drafting skills;
- Ability to analyse, plan, communicate effectively orally and in writing, draft report, organize and meet expected results, adapt to different environments (cultural, economic, political and social);
- Ability to engage stakeholders in personal data protection efforts, including knowledge of informal and emerging actors as well as knowledge of cross-cutting governance and personal data protection issues;
- Fluency in Romanian. Knowledge of English and Russian will be an asset.

Proven commitment to the core values of the United Nations, in particular, respecting differences of culture, gender, religion, ethnicity, nationality, language, age, HIV status, disability, and sexual orientation, or other status.

UNDP Moldova is committed to workforce diversity. Women, persons with disabilities, Roma and other ethnic or religious minorities, persons living with HIV, as well as refugees and other non-citizens legally entitled to work in the Republic of Moldova, are particularly encouraged to apply.

6. Documents to be included when submitting the proposals:

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

- Proposal explaining why they are the most suitable for the work including past experience in similar assignments;
- Financial proposal (in USD), specifying a fee per day and total requested amount including all related costs, e.g. fees, per diems, travel costs, phone calls etc.;
- Duly filled in and signed Personal History Form (P11) and at least 3 names for a reference check.