



**RECRUITMENT OF A CONSULTANT FIRM FOR THE FINALIZATION OF THE LEGAL AND  
REGULATORY FRAMEWORK TO GOVERN THE DIGITAL ECONOMY SECTOR  
IN WEST AFRICA**

Terms of reference

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August 2024

## I. CONTEXT

Since 2019, the WAEMU Commission has undertaken, jointly with the ECOWAS Commission, a project for a new legal and regulatory framework to govern the digital economy sector in West Africa.

To this end, a cooperation agreement was signed between the two Commissions to jointly carry out the reform of the existing legal and regulatory framework for telecommunications. The provisions of Article 2 of the said agreement designate the WAEMU Commission as the lead institution for the implementation of the project.

With funding from the European Union Delegation in Ouagadougou, a firm was recruited to develop a new legal and regulatory framework to govern the digital economy sector in West Africa. This new legal and regulatory framework had to take into account technological advances as well as new user trends.

A preliminary draft of the Community text was drawn up and submitted to the Member States of two Institutions during a regional validation workshop in December 2020. This preliminary draft was validated by the Member States, who proceeded to request that the two regional institutions organize national consultations to gather the opinions of all national actors in the digital economy<sup>1</sup>.

Seven of the eight WAEMU countries organized their national consultation workshops. Four ECOWAS Member Countries who are non-WAEMU members also organized the said national consultations. The ECOWAS Commission transmitted to its WAEMU counterpart the main conclusions of the four national consultation workshops held under its aegis.

The WAEMU Commission created a Task Force, composed of experts from the Ministries in charge of the digital economy and the regulatory bodies, to consolidate all the work done within the framework of the preliminary draft of the new legal and regulatory framework. However, the work of the Task Force could not be completed mainly because of the unavailability of experts from the National Regulatory Authorities and the Ministries in charge of digital economy in the WAEMU Member States.

It should be recognized that the digital economy sector is constantly changing and in view of the time that has elapsed since its development, a review of the draft text is necessary.

Thus, in order to take into account, the proposals and recommendations resulting from the regional validation workshop, the national consultation workshops, the work of the Task Force and **the latest developments in the digital economy sector**, the WAEMU and ECOWAS Commission have decided to recruit a consultant to finalize together the development of the new regulatory framework to govern the digital economy sector in West Africa.

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<sup>1</sup> Preliminary draft available at <https://sigtel.ecowas.int/legal-text/>

The World Bank is financing the implementation of the Digital Transformation for Africa/Western Africa Regional Digital Integration in Program (DTfA/WARDIP) SOP-1 which aims to improve broadband access and increase the use of high-speed internet in participating countries. The program also aims to advance integration of digital markets in Western Africa.

The ECOWAS Commission is a beneficiary of the first phase of this program. One of the components of the project that will be executed by ECOWAS is the connectivity market development and integration. This component concerns the development and integration of the regional connectivity market, in a way that encourages competition and private sector investment by (i) strengthening the policy and regulatory framework to foster a leveled playing field, (ii) harmonizing digital market environment and sector policies to ensure cross-border interconnection of networks and services, (iii) providing catalytic public funding to connectivity infrastructure PPP projects to increase the resilience of international and core backbone connectivity, and (iv) coordinating between stakeholders to stimulate private investment appetite.

Within the framework of the above component of DTfA/WARDIP, the WAEMU Commission and the ECOWAS Commission plan to employ the services of a consultant with proven knowledge of the challenges of the digital economy for proofreading of the draft text.

## **II. OBJECTIVES**

The main objective of the Consultant's mission is to finalize the new legal and regulatory framework to govern the digital economy sector in West Africa.

The specific objective is to integrate contributions from the different Member States and ensure that the draft legislation is updated to reflect new advances in the sector.

As such, the Consultant must carry out the following activities:

1. a general review of the preliminary draft of the legal and regulatory framework to govern the digital economy sector in West Africa;
2. consideration of the recommendations and contributions from the regional validation workshop;
3. take into account the recommendations and contributions resulting from the national consultation workshops;
4. consideration of the recommendations transmitted to the WAEMU Commission by its ECOWAS counterpart;
5. take into account technological advances in the field of the digital economy (Artificial Intelligence, Facial Recognition; Cybersecurity, Personal Data, Digital Platforms and others)
6. a general proofreading of the annexes of the draft text

## **III. EXPECTED RESULTS**

- The recommendations and contributions resulting from the regional validation workshop, the national consultation workshops and those transmitted to the WAEMU

Commission, as well as the work of the Task Force, are analysed and taken into account in the draft of the new legal and regulatory framework;

- The in-depth proofreading of Titles 1 to 7 is carried out;
- the general proofreading of the annexes to the draft text has been carried out;
- Technological developments related to the digital economy are integrated into the new legal and regulatory framework.
- Evolutions in the regulatory approach for the digital economy sector are considered and taken into account in the new legal and regulatory framework.
- The proposal for structuring the new legislative and regulatory framework, in the light of international best practices, is made;
- The new legislative and regulatory framework is available.

#### **IV. ACTIVITIES TO BE CARRIED OUT IN THE FRAMEWORK OF THE MISSION**

The Consultant's main activities will be:

- The analysis of the reports of the regional validation workshop, the national consultation workshops, and the conclusions transmitted by the WAEMU Commission and the consideration of their recommendations and contributions in the new legal and regulatory framework;
- The document review on the regulation of new technological advances (Artificial Intelligence, Facial Recognition, Cybersecurity, Personal Data, Digital Platforms) in the field of the digital economy and consideration of the regulatory aspects in the new legal and regulatory framework;
- The proposal for the structuring of the draft of the new legal and regulatory framework;
- Facilitation of a regional workshop to validate the draft of the new legal and regulatory framework, during which the consultant will present the updated draft framework;
- Participation in the meeting of Experts in charge of the digital economy preceding a Ministerial meeting on the draft text on the legal and regulatory framework for the digital economy sector for West Africa;

#### **V. CONSULTANT'S PROFILE**

##### **a. Qualification of the consultant/firm**

This assignment calls for a firm with experience in the telecommunications/ICT/digital economy sector and a good understanding of the challenges and opportunities inherent in the sector.

- a. The firm must have general experience in carrying out studies related to digital economy policy research, strategy or regulation formulation within the last five (5) years.
- b. The firm must demonstrate that they have carried out at least two (2) similar assignments related to the development of a legal and regulatory framework for the digital economy at the national or regional level during the last five (5) years.
- c. At least one (1) of these similar assignments must have been carried out in Africa.

### **b. Qualifications of the team**

The team proposed by the firm shall comprise at least two (2) experts ; a telecommunications/ICT lawyer and a digital economy expert. The telecommunications/ICT lawyer shall be the team leader and focal point with the ECOWAS and UEMOA Commissions.

The members of the team should meet the criteria outlined below.

#### **Telecommunications/ICT Lawyer**

The telecommunications/ICT lawyer must meet the following qualification criteria:

- Have a level of education of at least Bac+5 or the equivalent of a Master's degree in Legal Sciences, or any other equivalent training;
- Proof of professional experience of at least 10 years in telecommunications/ICT law in regulation and regulation of electronic communications of associated digital services;
- Work experience in the preparation of regulations at supranational level (regional or continental entities) in the digital economy sector would be an asset;
- Good knowledge of the digital economy sector in the context of ECOWAS and UEMOA and experience working with digital economy ministries of Member States would be an asset;
- The base documentation for this assignment is mostly available in French, so fluency in French is required. A good command of English would be an asset;
- Dynamic and committed with good writing skills;

#### **Digital Economy Expert**

The digital economy expert must meet the following criteria:

- A level of education of at least BAC+5 or equivalent of a Master's degree in Telecommunications, ICT, Computer Science, AI, or related field
- Proof of professional experience of at least 10 years in the digital economy sector.
- Proof of at least 5 years of technical experience in the area of emerging digital technologies and digital innovation.
- At least 5 years of experience in formulation and implementation of strategies and regulatory frameworks for the digital economy, including national and regional ICT plans and policies to drive productivity through digital economy; and designing and implementing digitalization strategies to accelerate the penetration, use and adoption of digital technologies
- Good knowledge of the digital economy sector in the context of ECOWAS and UEMOA and experience working with digital economy ministries of Member States would be an asset;
- The base documentation for this assignment is mostly available in French, so fluency in French is required. A good command of English would be an asset;
- Dynamic and committed with good writing skills.

## VI. METHODOLOGICAL APPROACH

The Consultant will propose the methodology, the organization and the means that he intends to use for the realization of the activities.

The Consultant will work closely with the WAEMU and ECOWAS Commissions.

## VII. EXPECTED DELIVERABLE

The service is expected to include a mission report containing:

- The draft new legal and regulatory framework to govern the digital economy sector in West Africa;
- The proposals for structuring the said new legal and regulatory framework.

To this end, the consultant must provide the original version of the deliverables in French and ensure that the translation is carried out in English and Portuguese. The cost of translation must be included in the consultant's financial proposal.

## VIII. CALENDAR

The entire mission will have to be carried out and the deliverable completed and sent to the WAEMU and ECOWAS Commissions within sixteen (16) weeks of signature of the contract.

<b>Deliverable</b>	<b>Timeline</b>
Submission of Deliverable 1 - Inception Report	Contract signature + 2 weeks
Submission of Deliverable 2 – Report containing <ul style="list-style-type: none"><li>- Synthesis of previous work (contributions and recommendations from the national consultations and the WAEMU Task Force)</li><li>- the regulation of new advanced technologies to be taken into account in the updated draft framework</li><li>- Proposal on the structuring of the draft new legislative and regulatory framework</li></ul>	Contract signature + 6 weeks
Validation workshop for deliverable 2 with Member States (online)	Contract signature + 8 weeks
Submission of Deliverable 3 – Updated Draft of the new legal and regulatory framework	Contract signature + 12 weeks
Validation workshop for deliverable 3 with Member States (physical)	Contract signature + 14 weeks

Submission of final deliverable 3 taking into account the comments from the regional validation workshop	Contract signature + 16 weeks
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### **VIII- SUPERVISION OF THE MISSION**

The assignment will take place under the supervision of the WAEMU and ECOWAS Commissions.

### **IX. DOCUMENTS TO BE MADE AVAILABLE TO CONSULTANTS**

Base documentation will be made available to the Consultant. These include, among others, the following preliminary documentation:

- Sectoral policies: Telecommunications and Information and Communication Technologies in WAEMU and ECOWAS;
- Community texts applicable to telecommunications;
- Final report of the study on the state of play of the regional infrastructure / identification of missing links and supply for cross-border capacities in the WAEMU area;
- Final report of the study on the evaluation of digital usage and national policies on the mass use of digital technology in the WAEMU area;
- Final report of the study on the development of a new legal and regulatory framework to govern the digital economy sector in West Africa;
- Draft new legal and regulatory framework to govern the digital economy sector in West Africa;
- Document on the Regional Programme for the Development of the Digital Economy of WAEMU.
- ECOWAS Digital Sector Development Strategy