Report of the Group of Observers
Procurement of electricity in Moldova (2018)

I. Background

Given the limited size of the Moldovan market and the strong political involvement in the procurement of electricity, annual electricity procurement by suppliers, transmission and distribution companies has always suffered from a lack of transparency and collusion between traders and generators. In these circumstances, and as a transitional measure on the way to establishing an open and interconnected wholesale market, the Energy Community Secretariat took the initiative to design and propose to the Moldovan authorities a procurement procedure for the annual electricity procurement by suppliers and network operators in Moldova.

2018 is the second year when such a procedure is applied and the procurement of electricity in Moldova is monitored by a Group of Observers including the Energy Community Secretariat but excluding the Ministry of Economy and Infrastructure and ANRE (which were members of group of Observers in 2017). In 2018, the Ministry of Economy and Infrastructure acted as the “information centre” of the Group of Observers.

II. The 2018 electricity procurement procedure

1. The invitation to express interest in tender

On 30 January 2018, all companies published on their website and sent to a number of suppliers an invitation to express interest in tender. Gas Natural Fenosa set 6 February 2018 as the deadline for receiving the letters expressing interest in the tender and the accompanying documentation. Moldelectrica set the deadline on 7 February 2018. RED Nord set the deadline on 8 February 2018.

Gas Natural Fenosa sent the invitation to express interest in tender to 20 companies, out of which 18 were Moldovan and 2 were Ukrainian.

2. The identification of potential suppliers and the qualification process

Gas Natural Fenosa informed the Group of Observers on 7 and 9 February, respectively that they received letters of interest, accompanied by supporting documentation, from Energocom, MGRES, DTEK Pavlogradugoli and Donbassenergo. The four companies were included in the list of potential suppliers and were informed that the opening and evaluation of the bids was scheduled for 13 March 2018.

On 23 February 2018, Gas Natural Fenosa made available electronic copies of the documents to the Group of Observers. The Group of Observers noticed that not all the companies submitted the required documentation in accordance with the 2018 Guidelines. Significantly, the license of MGRES was only valid for six months, with a possibility of renewal, and not for the whole period of the tendered contract. With regard to the source of electricity, Energocom stated that the exact source would be specified in the binding offer, as it was still in the middle of negotiations with potential suppliers itself. Original documents were also examined by members of the Group of
Observers at *Gas Natural Fenosa*’s headquarters on 19 February and *Moldelectrica*’s headquarters on 13 March.

The Group of Observers received no other information about the process of identification of the potential suppliers.

### 3. Launching the request for bids and reception of offers

On 23 February 2018, the Group of Observers was asked by the Ministry of Economy to provide an opinion on requests sent by *Moldelectrica*, *RED-Nord* and *FEE-Nord* to extend the deadline for the opening and evaluation of the bids from 6 March 2013 until 13 March 2018. The Group of Observers responded that, as a matter of principle, extension of deadlines entailed a risk that the 2017 experience (in which the bids were opened and checked, negotiations over price were conducted and the contracts were signed on 31 March, i.e. the last day of the previous contract) is repeated. However, the Group of Observers exceptionally agreed to an extension of the deadlines as the request for postponement was made well in advance and did not lead to a change in the overall schedule. Subsequently, all the companies procuring electricity set the dated of 13 March 2018 as the deadline for the opening and evaluation of the bids.

On 12 March 2018, representatives of *Gas Natural Fenosa* informed the Group of Observers that *Donbassenergo* submitted a written (and sealed) offer.

In the morning of 13 March 2018, new requests for an extension of the deadline for the opening and evaluation of the bids until 14 March 2018 were sent to the Group of Observers by *FEE-Nord*, *RED-Nord* and *Moldelectrica*, through the Ministry of Economy and Infrastructure, and by *Gas Natural Fenosa* directly. It was actually the Ministry of Economy supporting the interests of the state-owned company *Energocom*, and requesting the companies waiting to postpone the procedure until the next day, as *Energocom* had not been able to finalise its offer. The Group of Observers expressed its concern about this favouring a state-owned company which obviously was unable to finalise its documentation on time.

Also on 13 March 2018, *Gas Natural Fenosa* received a letter from *MGRES* stating that they withdraw from the procedure and that they will continue negotiations with *Energocom* and will no longer participate in their own name. Representatives of *DTEK* attended the opening of the bids but also presented no offer, claiming that they would present an offer the next day.

As a result of this apparently concerted action between *Energocom*, *DTEK* and *MGRES*, and with only one offer received from *Donbassenergo*, *Gas Natural Fenosa* decided to postpone the deadline for the opening and evaluation of the bids until the next day, 14 March 2018.

Without exception, all the other companies procuring electricity extended the deadline until 14 March 2018 upon requests from *Energocom* and the Ministry of Economy.

### 4. Evaluation of offers

On 14 March the Group of Observers attended the opening and evaluation of the bids at *Gas Natural Fenosa*. Representatives of *Energocom* and *DTEK* were present, as well as *Donbassenergo* via videoconference. Representatives of the Ministry of Economy also took part in the meeting.
At the beginning of the meeting, DTEK representatives announced that they withdrew from the tender.

In the first round, Donbassenergo offered a price of 66 USD/MWh. Energocom’s offer had two sources of electricity: 30% coming from DTEK, with a price of 60 USD/MWh and 70% coming from MGRES, with a price of 54 USD/MWh.

In the second round, Donbassenergo kept its price of 66 USD/MWh. Energocom reduced its financial offer: 30% coming from DTEK, 58.4 USD/MWh and 70% coming from MGRES, 50.4 USD/MWh.

In first round the bidders submitted their offers in sealed envelopes or by email. The offers in the second round were made orally via videoconference by Donbassenergo and in a sealed envelope by Energocom.

The winner was Energocom, with a final price of 52.8 USD/MWh (average). As the Group of Observers understood from a press release published by the Ministry of Economy, this price does not only apply to the tender organized by Gas Natural Fenosa, but also in the parallel tender procedures organized by Moldelectrica, RED-Nord and FEE-Nord.

The contracts by Gas Natural Fenosa with Energocom were signed on 15 March 2018.

On 20 March 2018, the Group of Observers was informed that ANRE approved the energy contracts for the period 1 April 2018 – 31 March 2019.

III. Progress compared to previous electricity procurement procedures

On the positive side is the participation of a new potential supplier, Donbassenergo. In addition, the contracts for electricity were signed two weeks before the expiry of the previous contracts (usually it has been on the last day of the previous contracts that this happened). The number of postponements was reduced. The separation between the pre-qualification phase and bidding phase has been made clearer.

IV. Criticism

There is serious room for improvement for the next annual procurement procedure. The 2018 electricity procurement procedure still had a number of important flaws, most importantly the active involvement of the Ministry of Economy in the last stages of the procedure, especially when it supported the request for extension of the state-owned company Energocom potentially to the detriment of other participants which could have been ready to submit their offers on time. Companies like Gas Natural Fenosa (which already had an offer from Donbassenergo submitted within the initial deadline), decided to extend the deadline in line with the request of Energocom supported by the Ministry of Economy.

It remains unclear why DTEK and MGRES were planning to bid in their name, but finally decided not to submit directly an offer on 14 March and preferred to negotiate with Energocom outside the official tender procedure.

In general terms, the role of the Ministry in the procedure is to be seen critical, as it confuses the role of the policy- and rule-setter, which requires neutrality, with supporting and intervening on
behalf of one participant in the tender, Energocom, the same company which eventually won all contracts. According to the note submitted by Energocom during the procurement procedure, the company’s only purpose is the trading of electricity on the Moldovan market.

V. Recommendations

An improved, more transparent procurement procedure, as well as the revision of the 2018 Guidelines in such a way that they reflect the 2018 experience is currently also part of the Proposal for the Power Sector Reform Plan (POWERSAP), as a condition for the effectiveness of the EBRD loan for the electricity Interconnection investment.

In the short term, amendments to the 2018 Guidelines as well as other institutional (better surveillance by domestic authorities, including ANRE and the competition authorities), structural (abolishment of the state’s quasi-purchase monopoly, Energocom, which for the second time in a row defined the electricity contracts and their margins, rather than the companies themselves) and technical improvements (implementation of an electronic platform) need to be made before the 2019 campaign. In the mid-term, the Secretariat recommends to increase liquidity by linking the Moldovan market to that of Ukraine (and later Romania) through a so-called import/export zone (with implicit auctions for the day-ahead market). In the long term, market coupling with these markets should ensue.

A number of minimum requirements for the 2019 electricity procurement procedure can be formulated already at this stage.

1. Energocom is a state-owned trader, which puts it at a significant advantage in relation to other competitors in a tender procedure largely influenced by the state. The Ministry of Economy must refrain from supporting Energocom to the detriment of other tenders.

2. If Energocom is not eliminated in favour of direct contracts by the Moldovan energy companies with domestic and non-domestic (Ukrainian) suppliers, its corporate governance and transparency needs to be seriously improved, including in terms of financial reporting, auditing, publication as well as compliance programmes to ensure operational independence and separation from the Ministry of Economy.

3. Deadlines must be respected, and all requests for extension should be formulated well in advance and thoroughly justified. All requests for extension submitted on the day when a certain procedural step should take place should be rejected.

4. A system of penalties (bid bonds) or guarantees for participation should be instituted for the companies which express their intention to participate in the procedure and then fail to submit a technical and financial offer.

5. A better separation of the documents to be supplied at the pre-qualification stage and at the bidding stage is needed.

6. Clear obligations regarding which documents to submit to the Group of Observers and in which timeframe should be put to companies organizing the tenders. The Ministry of Economy and Infrastructure should be excluded from the information chain.

7. Companies which do not fulfil the technical criteria should be disqualified from the procedure (after having been given the opportunity to complete their documentation). Tougher criteria should be imposed in the future on companies regarding the evidence for having no debts, for working on a balance/transparent economic model, and for fully paying for the primary energy they are purchasing.
8. The possibility to submit an improved offer should be limited to the first two best offers in the first round, in order to have relevance of the initial offers.

9. The Group of Observers should have the role of setting the date for the opening of bids in order to have all offers opened at the same time.

10. If a company intends to subcontract, it must state so at an early stage of the procedure. It should also provide complete documentation for all companies from which it procures electricity, as if those companies would have been bidding for themselves.

11. As some coordinated behaviour between Energocom, MGRES and DTEK especially at the late stages of the procurement procedure may have occurred, the Moldovan (energy and competition) regulators should start an investigation into whether the three companies have attempted to manipulate what should have been a transparent procurement procedure.

12. Although envisaged in the 2018 Guidelines, an electronic platform for the procurement of electricity has not been developed. Such an electronic platform would represent a virtual, truly competitive market where supply and demand meet and trade without any interferences from the outside. A common trading platform between Moldova and Ukraine should also be considered.