



PROCEDURAL ACT OF THE ENERGY COMMUNITY SECRETARIAT

2024/06/ECS-EnC on the adoption of a procedure for discharging with the Secretariat's obligations as Fiduciary under the Ukraine Energy Support Fund and the Moldova Energy Rescue Scheme

The Energy Community Secretariat,

Having set up the Ukraine Energy Support Fund ("the Fund") and the Moldova Energy Rescue Scheme ("the Scheme"), each of which is based on contractual frameworks under which the Secretariat acts as Fiduciary with the responsibility to disburse monies received from different donors in line with the conditions and requirements set by the respective contractual framework,

Whereas the applicable contractual framework features some standard elements but is tailored to the requests and expectations of each donor,

Whereas the direct beneficiaries under the Fund and the Scheme is normally the Ministry in charge of energy in the respective country, and the indirect beneficiaries are normally a number of predetermined companies or other entities submitting support requests for approval to the direct beneficiary,

Whereas disbursements are normally made to a third party such as vendors of equipment or energy, providers of services etc., and may be conditioned on the completion of a procurement procedure involving external procurement agents and resulting in a contract between the third party and the indirect beneficiary,

Whereas the applicable contractual framework normally imposes additional obligations on the Secretariat as Fiduciary, such as reporting and auditing,

Whereas the applicable contractual framework may be complemented by other arrangements such as memoranda of understanding with external procurement agents and/or national or international authorities and organizations,

Whereas the operations of the Fund have evolved and grown extensively in the last 1.5 years, both in volume and complexity,

Determined to discharge with its obligations as Fiduciary under the Fund and the Scheme in a standardized and transparent procedure under the overall responsibility

of the Director, the Lead of the Ukraine & Moldova Fiduciary Task Force (“the Lead”) and the Head of Ukraine Support Task Force Unit (“the HoU”),

ADOPTS THE FOLLOWING PROCEDURAL ACT:

Article 1
Responsibilities

1. Under the overall responsibility of the Director, the Secretariat shall exercise its rights and comply with its obligations as Fiduciary under the Fund and the Scheme based on the procedure set out by this Procedural Act.

2. The Lead shall be in charge of and oversee the implementation of the Fund in line with these Rules. The Lead shall report regularly to the Director about the status of implementation of the Fund and issues arising in the framework of the implementation of the Fund.

3. The Lead shall organize regular coordination meetings among all collaborators, as defined further in this Article. The Lead shall organize regular coordination meetings with the procurement agents and the Ministry of Energy of Ukraine.

4. The Lead shall be responsible for the processes laid down in Articles 2-4. He/she shall be supported in these processes in particular, but not exclusively, by the following collaborators, which shall report directly to him/her with regard to these processes:

- a) Fiduciary Management Advisor,
- b) Grants and Donor Relations Expert,
- c) Procurement and Contracting Expert,
- d) Communication and Impact Officer.

5. The HoU shall be responsible for the processes laid down in Articles 5-9. He/she shall cooperate in this regard closely with the Lead and report regularly to the Lead about any issues arising in the framework of these processes. He/she shall be supported in these processes in particular, but not exclusively, by the following collaborators, which shall report directly to him/her with regard to these processes:

- a) Procurement and Contracting Expert,
- b) Contract Management Officer,
- c) Finance Officer,
- d) Reporting Officer,
- e) Tracking Officer.

6. Within the framework of the processes described below, the Lead and the HoU may request support the Fiduciary Management Advisor and from any other official of the Secretariat and locally recruited staff on an ad hoc basis, if necessary (together “collaborators”).

7. Within the scope of responsibilities defined in the job descriptions, the collaborators shall discharge of their respective responsibilities in line with the provisions of this Procedural Act and any written instructions by the Director, the Lead or the HoU with the utmost diligence and care.

Article 2

Contributions and Donor Relations

1. The Lead, with the support of the Fiduciary Management Advisor and the Grants and Donor Relations Expert, shall support and coordinate with the Ministry of Energy of Ukraine any campaigns and activities reaching out to donors for contributions to the Fund.

2. The Lead, with the support of the Fiduciary Management Advisor and the Grants and Donor Relations Expert, shall serve as contact points for donors before and after having contributed to the Fund.

3. The Lead, with the support of the Fiduciary Management Advisor and the Grants and Donor Relations Expert, shall draft and negotiate contracts and other arrangements (memoranda etc.) related to the Fund with donors, direct beneficiaries and third parties, including earmarking, additional contributions etc, as well as amendments thereto. Any such negotiations shall be aligned with the Ministry of Energy of Ukraine, if necessary. The Director shall sign such contracts and arrangements, as well as amendments thereto, on behalf of the Secretariat.

4. The Reporting Officer shall be responsible for maintaining an up-to-date reporting file regarding contributions pledged, agreed and transferred.

5. The Communication and Impact Officer shall promote the Fund vis-à-vis the public and interested stakeholders, to raise general awareness and attract new contributions. He/she shall develop promotional material and use all possible media channels for that purpose.

Article 3

Support Requests

1. The Lead, with the support of the Fiduciary Management Advisor and the Grants and Donor Relations Expert, shall support the Ministry of Energy of Ukraine in identification of needs by indirect beneficiaries under the Fund and the preparation and verification of support requests in the framework of the Ministry's working group.

2. The Lead, with the support of the Grants and Donor Relations Expert (and other collaborators depending on the activity of the indirect beneficiary and the items requested, if necessary), shall review any support request submitted to the Secretariat as to its compliance with the requirements of the applicable contractual framework, in particular stipulated in the framework agreement. This review process shall follow the 4-eyes principle and be finalised without delay and shall be documented appropriately

in the form of a checklist to be designed for that purpose in which the collaborators involved are identified by name, their checks dated and signed. The Tracking Officer shall ensure and confirm that the indirect beneficiary is eligible to receive support under the Fund (including sanctions), and the Reporting Officer shall ensure and confirm that sufficient funds are available.

3. Following the review of a support request, the Lead shall respond to the request for reservation of funds under the Fund taking into account the level of funds available.

Article 4 Procurement

1. All unsolicited offers by vendors and other contractual partners based on notifications received via the Energy Community's website or in any other form shall be forwarded by the Procurement and Contracting Expert to the procurement agents.

2. The Lead, with the support of the Fiduciary Management Advisor and the Procurement and Contracting Expert, shall support the procurement agents in designing and implementing a procurement strategy which yields the most efficient and fastest results and in implementing the procurement processes in a swift and transparent manner.

3. The Procurement and Contracting Expert shall monitor whether procurement takes place in line with the applicable contractual requirements (including framework agreements) and procurement rules. He/she shall ensure in close cooperation with the procurement agents that the procurement process is conducted as fast and efficient as possible and in line with the applicable procurement rules.

4. The Procurement and Contracting Expert shall participate in negotiations with vendors and indirect beneficiaries, if necessary.

5. The Reporting Officer, in close cooperation with the Lead and the Procurement and Contracting Expert, shall respond to any requests by the procurement agents regarding availability of funds at any stage of the procurement process.

6. The Procurement and Contracting Expert shall report regularly about the progress of procurement and any delays and flag any issues related to the procurement process to the Lead.

Article 5 Commitments and Disbursements

1. The Contract Management Officer shall be responsible for the record keeping of all supply contracts and related documentation and communication submitted by the procurement agents to the Secretariat.

2. Upon receipt of a supply contract, the HoU, with the support of the Contract Management Officer (and other collaborators depending on the activity of the indirect

beneficiary and the items requested, if necessary), shall review the supply contract as to its compliance with the requirements of the applicable contractual framework and of the support request approved by the Ministry of Energy of Ukraine. This review process shall follow the 4-eyes principle and be finalised without delay and shall be documented appropriately in the form of a checklist to be designed for that purpose in which the collaborators involved are identified by name, their checks dated and signed. In the framework of this review, the Tracking Officer shall ensure and confirm that the indirect beneficiary and the supplier are eligible to receive support under the Fund (including sanctions), and the Reporting Officer shall ensure and confirm that sufficient funds are available.

3. Following the review of a supply contract, the HoU shall communicate to the Ministry of Energy of Ukraine the Secretariat's commitment to act as payer under the supply contract.

4. Upon receipt of an invoice related to a supply contract reviewed in line with the procedure laid down in paragraph 2 of this Article, the HoU, with the support of a collaborator, shall review the invoice as to its compliance with the requirements of the applicable contractual framework and of the supply contract. This review process shall follow the 4-eyes principle and be finalised without delay and shall be documented appropriately in the form of a checklist to be designed for that purpose in which the collaborators involved are identified by name, their checks dated and signed. In the framework of this review, the Tracking Officer shall ensure and confirm that the indirect beneficiary and the supplier are eligible to receive support under the Fund (including sanctions).

5. Upon finalisation of the review process of the invoice laid down in paragraph 4 of this Article, the HoU shall issue and sign a compliance verification, with the documentation of the reviews undertaken under paragraph 2 of Article 3 and under paragraphs 2 and 4 of this Article attached, and accompanied by the following text:

"I hereby confirm to the best of my knowledge and on the basis of the information submitted to us, as reported in the attached verification checklist, that the conditions for disbursement of funds from the Ukraine Energy Support Fund stemming from the applicable Fiduciary Agreement for payments under the above indicated purchase contract are fulfilled. The information available is sufficient for that purpose."

6. Upon issuance of the compliance verification in line with paragraph 5 of this Article, the HoU shall instruct the Finance Officer without delay to execute the payment in line with the supply contract and invoice received.

7. The Finance Officer shall effectuate disbursements under the Fund by bank transfers from the special purpose account and any other accounts created for the purpose to the supplier, and/or by issuing (or procuring) a letter of guarantee for the benefit of a supplier. The Finance Officer shall engage with the bank(s) involved in case of issues arising in the execution of payments and strive to resolve any such issues swiftly and in line with sound financial principles.

8. Disbursements shall be authorized by the Director in line with the Secretariat's Financial Management Rules.

9. The Head of Administrative and Financial Unit, with the support of the Finance Officer and any other collaborator, shall operate the special purpose account and any other accounts set up by the Secretariat in discharging with its role as Fiduciary under the Fund in line with the requirements set by the respective contracts and arrangements.

10. Any issues arising in relation to or in the implementation of any supply contract, including but not limited to regarding the reviews performed under paragraphs 2 and 4 of this Article, shall be dealt with by the HoU, with the Contracts and Procurement Expert and the Contract Management Officer, and reported regularly to the Lead.

Article 6

Tracking and Verification

1. The Tracking Officer shall ensure that the Secretariat disposes of the necessary evidence regarding the delivery of items or provision of services to indirect beneficiaries in line with supply contracts and the respective contractual framework within the timeline established by the Secretariat.

2. The Tracking Officer shall ensure that the Secretariat disposes of the necessary evidence regarding the proper use of procured equipment and fuel in any indirect beneficiary's bookkeeping and/or physical inspection on the spot, to the extent possible under the prevailing circumstances and in cooperation with the external procurement agents.

3. The Tracking Officer shall ensure that a register of quarterly records for all assets delivered under the Fund (with the exception of low value consumables or low-value immaterial assets in accordance with Ukrainian law) is established and maintained by the Secretariat.

4. In order to discharge with its duties under the previous paragraphs, the Tracking Officer shall maintain a list of contact persons of the indirect beneficiaries and remain in close contract with them for the duration of the implementation of supply contracts and thereafter, if necessary. He/she shall be supported in the above tasks by a collaborator in order to ensure compliance with the 4-eyes principle.

5. The Tracking Officer shall regularly report on the above to the HoU and raise any issues without delay.

6. The Tracking Officer shall support any other entity engaged in monitoring the proper use of procured equipment and fuel, including the procurement agents, any entity authorized by donors and the national regulatory authority in line with the Memorandum of Understanding concluded with the Secretariat.

Article 7

Reporting

1. The HoU, with the support of the Reporting Officer and all collaborators involved, shall ensure that the Secretariat complies with its reporting obligations enshrined in the applicable contractual framework and shall prepare regular and any ad hoc reports requested to the Ministry of Energy of Ukraine and to donor(s) about contributions received on, and disbursements made from the special purpose account of the Fund.

2. For the purpose of the reports listed under paragraph 1 of this Article, the Reporting Officer shall develop and update a reporting tool, standardized to the extent possible, and provide any statistics requested.

Article 8 Auditing

The HoU, with the support of the Internal Audit Expert, the Reporting Officer and the Finance Officer, shall ensure timely preparation and conduct of any independent audit as required or requested under the applicable contractual framework of the Fund, with the support of all collaborators involved.

Article 9 Record keeping

1. Any collaborator involved shall be responsible for maintaining records of all relevant documents and communication related to the tasks performed by him/her in an appropriate and transparent manner. This includes, but is not limited to:

- a) records of all contracts and arrangements, including the respective applicable lists of indirect beneficiaries, template framework agreements and other relevant annexes,
- b) records of all contributions transferred to the special purpose account in the form of bank statements,
- c) records of all approved support requests (including annexes), requests for reserving funds, requests for an act of disbursement and any other relevant communication from the Ministry of Energy of Ukraine to the Secretariat, as well as any review, comments or recommendations by independent third parties,
- d) records of all supply contracts, invoices and/or other documents upon which disbursements are being made,
- e) records of the compliance verification, including the verification checklists and any supporting documents and evidence,
- f) records of all disbursements made in the form of bank transfers or letters of guarantee,
- g) records of tracking activities in line with Article 6,

h) records of all reports issued in line with the respective contracts and arrangements,

i) records of all audit reports issued.

2. For the purpose of record-keeping, the Head of Administrative and Financial Unit, with the support of the Fiduciary Management Advisor, shall make available a safe location on the Secretariat's server which prevents ex post changes made to documents saved and allows tracking of all access to and traffic on that location.

Article 10

Moldova Energy Rescue Scheme

1. The provisions of this Procedural Act shall apply to the implementation of the Scheme as far as relevant.

2. The Senior Energy Expert for Moldova shall be responsible for following-up on the implementation of the Scheme in regular intervals and to report to the Lead.

Article 11

Entry into Force

This Procedural Act enters into force on 19 August 2024. Upon its entry into force, it shall repeal 2023/1/ECS-EnC on the adoption of a procedure for discharging with the Secretariat's obligations as Fiduciary under the Ukraine Energy Support Fund.

For the Energy Community



Artur Lorkowski
Director

Vienna, on 19 August 2024