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## TERMS OF REFERENCE

### National Legal Consultant on solid biomass regulatory framework

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<b>Duty station:</b>	Chisinau / home based
<b>Reference to the project:</b>	Moldova Energy and Biomass Project (MEBP)
<b>Contract type:</b>	Individual Contract (IC)
<b>Duration of initial assignment:</b>	July 2016 – December 2016 (50 days of consultancy)
<b>Expected duration of assignment:</b>	July 2016 – November 2017 (100 consultancy days, 50 days each year) subject to extension upon positive accomplishment of the initial assignment

#### **A. BACKGROUND**

The first phase (2011-2014) of the Moldova Energy and Biomass Project (MEBP) with a budget of 14.56 million EUR project, funded by the European Union and UNDP and implemented by UNDP, contributed to a more secure, competitive and sustainable energy production in the Republic of Moldova through targeted support to the most viable and readily available local source of renewable energy, which is biomass from agricultural wastes.

In 2015 the Project entered its second phase in the framework of the Eastern Partnership Integration and Cooperation (EaPIC) programme, based on its continued high relevance and the clearly identified need to further support the consolidation of the emerging biomass market in the country. The extension timeframe spans until the end of 2017 with additional EU-funding of 9.41million EUR.

Major activities of MEBP include development of the public sector through creating demand and private sector through increasing the capacity on the supply side of the biomass sector. Creating demand on the public sector side consists of grants and capacity building activities that are oriented to the installation of biomass-based heating systems within publicly managed institutions: schools, hospitals, kindergartens, etc. Increasing the capacity of the supply side consists of various financial and technical assistance mechanisms to support competitive development of solid biofuel production and biomass boiler technology transfer.

One of the centerpieces of MEBP activities is to support developing the local legal and policy framework that would be prone to establishing a competitive basis for biomass market. Moldova is a net importer of energy products and a predominantly agricultural country where solid biomass potential could have an immediate application if proper policies and frames exist. Supporting local biomass production through legal, financial and institutional instruments is one of the priorities Government of Moldova (GOM) has set in its 2030 National Energy Development Strategy.

The first efforts to create systematic supply and demand started in early 2011 when MEBP 1 was launched. GOM through Ministry of Economy (MOE) established Energy Efficiency Department to develop policies and Agency for Energy Efficiency (AEE) to implement those policies through coordination and attraction of donor assistance, managing that assistance, coordinating and synergizing various sectors, players and value chains oriented to produce competitive and reliable renewable products and systems.

Despite some progress, biomass potential remains unexplored and remains vulnerable to market variations and non-functioning systems like legal support, subsidies, competitive and affordable finances, associative representation and lobbying, access to technical assistance, know-how and technology, etc.

In an effort to respond to existing and uprising challenges, MEBP looks to hire a national consultant to provide legal advice to project staff and other relevant stakeholders on various legal issues pertaining to biomass development activities. Some of the areas of legal expertise that require attention but are not limited to are: 1) fiscal regulation, 2) public procurement, 3) public private partnership, 4) energy efficiency and renewables, 5) waste management and other.

## **B. SCOPE OF WORK and KEY ACTIVITIES**

MEBP activities are cross-cutting and multiple striving to outreach the various sub-sectors and domains of the solid biomass sector. Most activities are new and innovative for the Moldovan environment and intend to set examples for replication or create proper and inductive conditions for replication and development. In order to ensure proper alignment and synergies among different activities including legal compliance, MEBP seeks legal assistance on the following areas pertaining to the development of biomass sector:

- 1) public and private partnership, or other legal and organizational ways of long-term cooperation between public and private partners
- 2) public procurement
- 3) fiscal regulation and legal interpretation of various taxation issues governing biomass activity
- 4) customs code and various regulations that govern the import and export activities of various biomass-related products and services
- 5) public administration and the interrelations between different levels of authorities and various stakeholders
- 6) energy efficiency, renewables
- 7) waste management
- 8) association and cooperation
- 9) other areas not limited to the above and as requested by MEBP

Some background information on selected key areas of required legal expertise include:

**Public Private Partnerships:** One of MEBP's central activities are developing and strengthening of cooperation between public and private sector. One of key MEBP's components calls for development of Public Private Partnerships (PPPs) for biomass-based heating services where the public partner is one Rayon Council that represent several public institutions from around its territorial-administrative unit. The Law No. 179 of 10.07.2008 on PPPs and Governmental Decision Nr. 476 of 04.07.2012 on the standard procedures and conditions of selecting the private partner represent the key guiding lines for the establishment of 9 new biomass-based heating PPPs around the country. While general principles of implementing and developing PPP are clear, there are many intricacies related to individual projects like transmitting the public facility, plant and equipment to private partner during the length of the contract. Other aspects of legal expertise would be the draft contract that the Authorities are supposed to launch the private partner tender with and final contract development that will guide the local authorities and private partner throughout the length of the contract. Another important aspect of legal assistance lies within proper reflection of levels of relationships involved in an associated contract where Rayon Council is delegated to represent several institutions from different administrative locations.

**Public Procurement:** Public procurement is central to MEBP activities as public authorities are its main beneficiaries. A new Law and regulations on public procurement has entered into force (Law No. 131 from 03.07.2015) as of May 1, 2016 opening up new possibilities for public and private cooperation. The consultant will look closely at the existing regulation striving to identify possibilities that would permit framing a long-term contract between public and private partners complying with the key indicator of

securing long-term private investment. Legal frames for a long term contract between public and private entities for public heating services has to be explored and documented.

Another aspect of public procurement relates to interpretation of various clauses of the law and its application in relation to international financial resources geared toward and managed by local public and governmental institutions. For instance, can a grant from an international donor be managed under a special regime or does it have to be managed as a general public procurement facility?

**Public Administration:** Moldovan laws and regulations on Public Administration are governing the activities of MEBP and all public partners of different levels involved in the project. In project development process, different interpretation exists on the involvement and responsibilities of certain parties. A legal advice guiding MEBP beneficiaries through the legal implication is required when a stalemate is reached on certain decisions, involvement or interpretations.

**Tax Levy on Biomass products and services:** Presently, Tax Code Title III Chapter 5 article 104 stipulates that certain biomass products are liable to 0% VAT and producers and different level of authorities interpret it differently. Presently, different producers interpret the clause differently through application of 0% or 20% to their products. Heating services from biomass are also liable to 20% of VAT. Presently, Ministry of Economy mounted a whole 0% VAT promotion for the whole biomass value chain as a method to support local economy. Heating from biomass is at a disadvantage in the conditions when natural gas is levied only 8% VAT. Interpretation, application and lobbying for sector-oriented policies could fall into the scope of work of the legal advisor.

**Waste Management, Energy Efficiency, Renewables, Environmental Protection:** Most of these areas and concepts are relatively new for the Moldovan environment and there is no established experience and expertise. As the development of different projects are picking up new challenges emerge and legal compliance and interpretation becomes central to progressive development. Moldovan Parliament recently adopted and GOM is in process of development of new Laws and regulations on Renewables, Waste Management, Energy Efficiency, etc to align the Moldovan legislation to EU standards and requirements. Newly adopted regulations open up new opportunities that will need to be discovered, documented and integrated into MEBP activities and efforts. Concrete areas of legal expertise will be determined and communicated once the need arises.

**Association, cooperation and other legal areas:** MEBP is in process to develop one or several associations and/or business cooperatives in the biomass sector. Determining proper legal form for producer groups and registering could be another topic on the legal list of things to do.

The areas of legal expertise are not limited to the above and could expand vertically and horizontally through one or different fields as the need will arise.

### **C. EXPECTED OUTPUTS**

Each need for legal expertise will be determined and formulated on a separate basis. Findings, conclusions and other products developed during the assignment must be presented in written form. The following type of reports are envisioned to be presented during the assignment:

- Written reports with conclusion on different subject matters depending on instructions received from the project supervisor. Number of reports could vary and the consultant will present the budgeted man-day effort before starting any assignment and the actual one upon conclusion of the assignment. Each budgeted effort will be approved with project supervisor before starting the assignment.
- Other type of documents (letters, researches, compilations) that were decided to generate during the assignment as requested and coordinated by project supervisor
- A final report describing all efforts and activities of the consulting assignment and how they were distributed.

The legal advisor's assistance could be in oral form too depending on the context, setting as well as complexity and required effort and timeframes to complete particular assignments. If a confusion arises on the final way of presenting results, the decision on the exact form to conclude concrete assignments be it written or oral will be determined by the project supervisor.

All written and oral reports or presentations must be presented in a professional manner that will be understood by the target audience. If the reports are written for MEBP then they must use legal language but interpreted and presented in a way that is acceptable by the general public. In case the documents are developed for public authorities or other legally-prone audiences then the reports should be presented accordingly.

All documents and reports developed under this assignment are property of UNDP and it holds the right to solely decide upon its use and publication.

#### **D. TIMEFRAMES, SCHEDULES AND DELIVERABLES**

There are no defined timeframes for this assignment at this point. Concrete deliverables, timeframes and distribution of effort will be estimated and approved upon concrete assignment, however the tentative list shall include the following deliverables:

- 1) Ensuring long-term contracting and private investment under different forms of organization and contracting within public acquisitions, public-private partnerships, concessions, etc.
- 2) Contracts between public and private partners under PPP, public acquisitions, concessions, etc
- 3) Interaction and legal frames for collaboration among different levels of public administration and their legal implications in multi-party agreements.
- 4) Waste transformation into Refuse Derive Fuel and legal implications of using it as fuel.
- 5) Guidelines on forming a cooperative organization, association in Moldova.
- 6) Assistance in lobbying actions of Value Added Tax and other sector subsidies that would support sector development

Number of topics involved and reports could vary and the consultant will present the budgeted man-day effort before starting any activity and the actual time log upon conclusion of the assignment. Each budgeted effort will be approved with project supervisor before starting the assignment.

The consultant will receive clear instructions in written form on expected output from the project supervisor.

Concrete activities, workload and timetables will be determined once areas for research are determined by project supervisor and jointly approved.

The total number of days could vary upon the actual need for service and the actual performance of the consultant.

#### **E. ORGANIZATIONAL SETTING**

The Consultant will work under the direct supervision of the Business Development Officer and overall supervision of MEBP Project Manager. MEBP will put at the contractor's disposal all available materials and necessary information for the achievement of tasks and will facilitate the meetings, as needed.

**The payment for services provided by the Consultant will be released on a monthly basis based on the approved time-sheets confirming the actual volume of work performed and based on outputs delivered and accepted by MEBP during the given reporting period.**

## **F. QUALIFICATIONS AND SKILLS REQUIRED**

### *Academic Qualifications:*

- Bachelor degree in Law or related discipline;

### *Working experience:*

- At least 10 years of experience of legal practice in public and/or private areas;
- Experience in purchasing in public or private sectors;
- Previous experience in drafting normative documents, writing comprehensive business plans, defending business cases pertinent to the environment or energy field is a strong advantage;

### *Competencies and skills:*

- Sound knowledge of legal drafting process, analysis of legal and normative acts;
- Excellent knowledge of and experience of Moldovan laws and regulations in the areas public private partnership, public purchasing, fiscal matters, energy and renewables;
- Solid understating and awareness of EU *acquis communautaire* in the area of renewables and biomass in particular would be an advantage;
- Ability of introducing new concepts to new environment demonstrated by previous experience;
- Strong research and analytical skills, ability to produce quality and customer oriented reports and analysis;
- Fluency in Romanian and Russian. Good command of written and spoken English would be an advantage;

### *Personal qualities:*

- Responsibility, creativity, flexibility and punctuality;
- Ability to solve difficult and challenging projects;
- 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;