

**PROCEDURAL ACT
OF THE ENERGY COMMUNITY SECRETARIAT**

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 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, provider 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,

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 and Deputy Director,

ADOPTS THE FOLLOWING PROCEDURAL ACT:

Article 1
Responsibilities

1. The Deputy Director shall manage and discharge with the Secretariat's obligations as Fiduciary under the Fund and the Scheme based on the procedure set out by this Procedural Act, with the support of the following collaborators (together "collaborators involved"):
 - a) A designated senior member of the Legal Unit, acting as Lead of the Ukraine & Moldova Fiduciary Task Force, which shall consist of the Fiduciary Management Advisor and Tracking Officer
 - b) The Head and designated members of the Administrative and Financial Unit, including the Finance Officer
 - c) The Deputy Lead and the members of the Ukraine Support Task Force, including the Procurement Advisor
 - d) The Senior Energy Expert for Moldova
 - e) The Communication and Impact Officer
 - f) Any other required officials of the Secretariat and locally recruited staff on an ad hoc basis.
2. The Director, the Deputy Director, and the collaborators involved shall discharge of their respective contractual and statutory responsibilities with the utmost diligence and care.

Article 2

Contract drafting

1. The Deputy Director shall negotiate contracts and other arrangements (memoranda etc.) related to the Fund or the Scheme with donors, direct beneficiaries and third parties, including earmarking, additional contributions etc. The Lead of the Ukraine & Moldova Fiduciary Task Force shall draft the necessary contracts and arrangements. The Director shall sign such contracts and arrangements on behalf of the Secretariat.
2. The Head of Administrative and Financial Unit shall keep all contracts and arrangements on file, including the respective applicable lists of indirect beneficiaries, template framework agreements and other relevant annexes.
3. The Communication and Impact Officer shall promote the Fund and the Scheme vis-à-vis the public and interested stakeholders, to raise general awareness and attract new donations. He/she shall develop promotional material and use all possible media channels for that purpose.

Article 3

Contract management

1. The Lead of the Ukraine & Moldova Fiduciary Task Force, with the support of the Fiduciary Management Advisor, shall establish and maintain structured check-lists detailing the contractual rights and obligations assumed by the Secretariat for each donation made under the Fund or the Scheme, as well as any information to be received under the respective contracts and arrangements (including framework agreements concluded between direct and indirect beneficiaries) from any side, and propose the necessary measures to follow-up within the applicable time periods.

2. The Head of Administrative and Financial Unit, with the support of the Finance Officer, shall operate the respective special purpose accounts and any other accounts set up by the Secretariat in discharging with its role as Fiduciary under the Fund and Scheme in line with the requirements set by the respective contracts and arrangements.
3. The Head of Administrative and Financial Unit, with the support of the Finance Officer, shall maintain records of all relevant documents related to the Fund and Scheme. This includes, but is not limited to
 - a) maintaining records of all donations transferred to the respective special purpose accounts in the form of bank statements,
 - b) maintaining records of all approved support requests, requests for reserving funds, disbursement requests and any other relevant communication from the beneficiary to the Secretariat, as well as any review, comments or recommendations by independent third parties,
 - c) maintaining records of all purchase agreements, binding offers, invoices and/or other documents upon which disbursements are being made,
 - d) maintaining records of the verification of compliance referred to in Article 5(5), including the verification checklists and any supporting documents and evidence,
 - e) maintaining records of all disbursements made in the form of bank transfers or letters of guarantee.
 - f) maintaining records of tracking activities in line with Article 6.

All Collaborators involved shall forward any relevant information to the Head of Administrative and Financial Unit on their own initiative.

4. For the purpose of record-keeping, the Head of Administrative and Financial Unit, with the support of the Finance Officer, shall create and maintain 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.
5. The Deputy Director shall communicate the respective list of indirect beneficiaries, including any amendments thereto, to the donor within the time periods prescribed by the respective contract.

Article 4

Needs Identification and Procurement

1. The Deputy Head of Ukraine Support Task Force, supported by the Procurement Advisor, shall identify the needs by indirect beneficiaries under the Fund and the Scheme, support indirect and direct beneficiaries in the signature of framework

agreements, and the preparation and verification of support requests, taking into account any in-kind support channeled through the Ukraine Support Task Force.

2. For the purpose of increasing transparency, the Deputy Head of Ukraine Support Task Force, supported by the Procurement Advisor, shall create and maintain the data base of unsolicited offers by vendors and other contractual partners based on notifications received via the Energy Community's website.
3. To the extent the applicable contractual framework under the Fund or the Scheme envisages the involvement of external procurement agents, Deputy Head of Ukraine Support Task Force, supported by the Procurement Advisor, shall advise and support them in designing and implementing a procurement strategy which yields the most efficient and fastest results. Efficiency includes ensuring the shortest possible delivery time.
4. The Deputy Head of Ukraine Support Task Force, supported by the Procurement Advisor, shall carry out and/or participate in all stages of the procurement procedure. To the extent the applicable contractual framework under the Fund or the Scheme envisages the involvement of external procurement agents, he/she shall monitor whether procurement takes place in line with the applicable contractual requirements (including framework agreements) and procurement rules, and ensure that the procurement process is conducted as fast and efficient as possible. He/she shall carry out and/or participate in negotiations with vendors and indirect beneficiaries.
5. To achieve the objectives of paragraphs 1 and 2, the Deputy Head of Ukraine Support Task Force, with the support of the Procurement Advisor, shall develop and maintain a tracking tool of all procurement activities.
6. The Deputy Head of Ukraine Support Task Force, with the support of the Procurement Advisor, shall hold regular meetings, and share and receive all relevant information with and from the external procurement agents.
7. The Deputy Head of Ukraine Support Task Force shall report to the Deputy Director and the Lead of the Ukraine & Moldova Fiduciary Task Force.

Article 5

Reservations and Disbursements

1. The Head of Administrative and Financial Unit with the support of the Finance Officer, shall process requests for reservations of funds under the Fund and the Scheme on the respective special purpose account. The Lead of the Ukraine & Moldova Fiduciary Task Force shall prepare the corresponding communication to the direct beneficiary.
2. The Head of Administrative and Financial Unit, with the support of the Finance Officer, shall effectuate disbursements under the Fund and the Scheme by bank transfers from the respective special purpose account and any other accounts created for the purpose to the vendor or service provider, and/or by issuing (or procuring) a letter of guarantee for the benefit of a vendor or service provider.

3. Disbursements shall be authorized by the Director in line with the Secretariat's Financial Management Rules.
4. Before submitting disbursements for authorization to the Director, the Head of Administrative and Financial Unit shall ensure the availability of a verification of compliance to be signed by the Lead of the Ukraine & Moldova Fiduciary Task Force and approved by the Deputy Director. This verification of compliance shall be 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] [Moldova Energy Rescue Scheme] stemming from the applicable [Grant and Fiduciary Agreement] for payments under the above indicated [purchase contract] are fulfilled. The information available is sufficient for that purpose.
5. The Lead of the Ukraine & Moldova Fiduciary Task Force, with the support of the Fiduciary Management Advisor and all collaborators involved, shall collect, verify and fill in the required information in a verification check list to be designed for that purpose. All collaborators involved shall be identified by name for the information he/she is responsible for.
6. As part of the verification checklist referred to in the previous paragraphs, the Lead of the Ukraine & Moldova Fiduciary Task Force, with the support of the Fiduciary Management and the Tracking Officer, shall ensure in particular
 - a) That any act of disbursement is linked to a specific donation and corresponds to matching support and disbursement requests, and is made in line with the terms of a purchase agreement and an invoice issued by the vendor or provider;
 - b) That the support request and disbursement request are in line with the contractual framework applicable to the respective donation under the Fund or the Scheme;
 - c) That any indirect beneficiary is eligible for disbursement and no disbursement is made for the benefit or to companies under sanctions as defined by the relevant contractual framework for each donation;
 - d) That the direct beneficiary and any external procurement agents have discharged with their obligations under the respective contractual framework applicable under the Fund or the Scheme;
 - e) That disbursement would not contravene or risk to contravene any obligation assumed by the Secretariat or the direct beneficiary vis-à-vis the specific donor, the direct beneficiary vis-à-vis the Secretariat or an indirect beneficiary vis-à-vis the direct beneficiary;
 - f) That the available information is complete and sufficient for the purpose of signing the verification check-list.
7. The Lead of the Ukraine & Moldova Fiduciary Task Force shall submit the verification checklist including all supporting information, documentation, communication and other relevant evidence to the Head of Administrative and Financial Unit in line with Article 3(3).

Article 6

Tracking

1. The Tracking Officer shall ensure that the Secretariat disposes of the necessary evidence regarding the implementation of any contract or arrangement upon which disbursements from the Fund or the Scheme have been made. Evidence shall be collected from all available sources, including verifying the proper use of procured equipment and fuel in any indirect beneficiary's bookkeeping and physical inspection on the spot, to the extent possible under the prevailing circumstances and in cooperation with the external procurement agents.
2. The Tracking Officer shall report about his/her findings in each individual case to the Deputy Director and the Lead of the Ukraine & Moldova Fiduciary Task Force.

Article 7

Reporting

3. The Lead of the Ukraine & Moldova Fiduciary Task Force, with the support of the Fiduciary Management Advisor and all collaborators involved, shall ensure that the Secretariat receives all relevant information from direct and indirect beneficiaries, external procurement agents and other relevant stakeholders in line with the applicable contractual framework (including framework agreements) and in due time, and shall forward them to the Deputy Director and, for the purpose of documentation, to the Head of Administrative and Financial Unit.
4. The Lead of the Ukraine & Moldova Fiduciary Task Force, with the support of the Fiduciary Management Advisor and all other collaborators involved, shall prepare the submission of any relevant information by the Deputy Director to donors, direct beneficiaries and other stakeholders without any delay in line with the applicable contractual framework (including framework agreements).
5. The Lead of the Ukraine & Moldova Fiduciary Task Force, with the support of the Fiduciary Management Advisor and all collaborators involved, shall draft quarterly reports to donors and direct beneficiaries about donations received on, and disbursements made from the respective special purpose accounts of the Fund and the Scheme. For this purpose, the Fiduciary Management Advisor shall develop a reporting tool, standardized to the extent possible.
6. The quarterly reporting referred to in paragraph 5 shall be complemented by ad hoc reports upon request of the Deputy Director.

Article 8

Auditing

The Head of Administrative and Financial Unit, with the support of the Finance Officer, shall ensure the availability of funds, timely preparation and conduct of any independent audit as required or requested under the applicable contractual framework of the Fund or the Scheme, with the support of all collaborators involved.

Article 9
Coordination

1. Collaborators involved shall report to the Deputy Director and the Lead of the Ukraine & Moldova Fiduciary Task Force.
2. The Deputy Director, with the support of the Lead of the Ukraine & Moldova Fiduciary Task Force, shall organize regular coordination meetings among all collaborators involved.

Article 10
Entry into Force

This Procedural Act enters into force on the day of its adoption. Article 3 shall also apply to activities under the Fund and the Scheme performed in 2022.

For the Energy Community

A handwritten signature in black ink, appearing to read "Artur Lorkowski".

Artur Lorkowski
Director

Vienna, on 10 January 2023