**Terms of Reference**

**Selection of international legal expert**

**Moldovan Government/UNDP/Embassy of Sweden Project:**

**The Dniester Hydro Power Complex Social and Environmental Impact Study**

### Project Title

The Dniester Hydro Power Complex Social and Environmental Impact Study

##### **B. Background and rationale of the project**

The Dniester River is the ninth largest river in Europe with total length of 1,350 km and basin area of more than 72,000 km2. Approximately 8.5 million people (5.5 in Ukraine and 2.7 in Moldova) live in the river basin. In addition to the Moldovan users of the Dniester water, including the city of Chisinau, the river is used as a source for drinking water for about 3,5 million peoples in cities, situated out of the Dniester River basin - Chyrnivtsy and Odesa (both, in Ukraine). It is the fourth largest river in Ukraine and the largest one in the Republic of Moldova, meeting about 70 percent the Moldova’s water consumption needs, being thus considered as a strategic surface water resource for the environmental and socio-economic security of the Republic of Moldova.

The first Hydro Power Station on the Dniester River was built in Moldova in the town of Dubasari in 1954. Beginning from 1973, Ukraine has been continuously constructing on the river the second hydropower facility, known as Dniester Hydro Power Complex (HPC). The initial technical design of the HPC was modified in the 2000s in terms of increasing the electricity generation output. It was followed by the installation of additional turbines and subsequent change of the initial role of the water accumulation reservoir (buffer water reservoir), constructed in the riverbed.

Currently, the Dniester HPC consists of two Hydropower Stations (HPS-1 and HPS-2) and Pumped Storage Power Plant (PSP) situated upstream of the Moldovan state border. The dam of the HPS-1 has formed the main water reservoir. Construction of HPS-1, with a total power capacity of 702 MWt lasted from 1973 to 1983. Construction of HPS-2, with a designed capacity of 40,8 MWt, commenced in 1983. It is situated twenty kilometers downstream of HPS-1, near village Nagoryany in the Vinnytsia region in Ukraine and the Moldovan village Naslavcha. Its dam has formed the buffer water reservoir with a length of 19,8 kilometers. The dam of the HPS-2 buffer reservoir was initially designed to mitigate hydropeaking and to ensure uniform water flow downstream and not for the hydro power generation as it is happening now. The Dniester HPC is mainly situated on the territory of Ukraine, except HPS-2 that occupies around 20 ha of the Moldovan territory.

The construction of Dniester PSP began in 1988. However the construction was suspended in 1991. The first generation unit was commissioned in 2009 (out of a total of seven planned turbines). The Dniester PSP is expected to become after finalization the largest pumped-storage HPP in Europe with 2,268 MW in generating mode and 2,947 MW in pumping mode. In this regard, Ukraine further plans to additionally install 4 (four) new generation units (hydro power turbines) which will lead to an increase of the water level by 7 meters in the buffer reservoir. Following the plan above, during the last several years Moldova and Ukraine have been negotiating about official transfer of 17 ha of Moldovan territory to Ukraine for its further use for hydropower generation. This area represents the river bank bordered by the steep slope that will be regularly submerged.

In addition, the construction of 6 (six) new hydropower plants in the upper stretch of the Dniester is envisaged in the Ukrainian National Program on Hydropower Development until 2026, approved in 2017.

The Dniester HPC has been functioning for many years and various negative environmental impacts and other consequences of its operation have been registered by State Hydrometeorological Service downstream of the Dniester River. Generally, the critical pressures generated by HPC are well known. These are hydropeaking, altered water flow and fluctuating water level, sharp decrease of the natural water temperature values in the downstream river stretch which can be traced up to the Dubasari water reservoir, non-typical high transparency of water and reduced self-purification capacity of the river, drastic slow up of the gravel and sand sediments movement, extensive growth of aquatic vegetation in some river stretches, loss of valuable fish biodiversity and decline of fish population due to both blockage of migratory pattern, and changed features and loss of aquatic habitats, etc. Joint Dniester Expeditions have also indicated severe water quality problems, declining biodiversity and deteriorating ecosystems along the river.

To address cooperation on the hydro-energetics issues, currently, the Agreement on functioning of the Dniester HPC is being drafted and negotiated between the Governments of Moldova and Ukraine. It aims to provide the legal background for the functioning of the Dniester HPC and its further upgrading for full scale operation, as well as to establish responsibilities of both contracting parties in terms of ensuring safety of the HPC functioning, parties’ rights, use of properties, leasing of land, etc. The negotiation process of the Agreement has accelerated during last 2 (two) years, and in 2017, the parties came up with a revised draft of the Agreement. However, because of certain provisions on environmental issues it is not ready for signature.

In order to understand the implications of the further development of the Dniester HPC on ecosystems and the population of Moldova, as well as to ensure that the position of the Moldovan negotiation team is based on scientific evidence, the Ministry of Agriculture, Regional Development and Environment of the Republic of Moldova requested support in elaboration of a study on the current and potential impacts of the functioning of the Dniester HPC on the territory of Moldova.

A comprehensive impact assessment Study covering a wide range of issues linked to the hydropower shall be carried out. Finally, the Study shall provide both the Government and broad public with scientifically based assessments and data to be used for negotiation of the Agreement, particularly, addressing environmental, social and legal implications of such an Agreement.

##### **C. Scope, objectives and expected results of the project**

The overall scope of the project is to support the sustainable management and protection of the Dniester River.

The specific objectives are:

1. To ensure that Government of the Republic of Moldova understands of the impacts of the functioning of the Dniester HPC and is fully prepared to continue the negotiations of the Agreement on the functioning of the Dniester HPC.
2. To provide the public with science-based information on the current and potential impacts of the functioning of the Dniester HPC.

The expected outputs of the project are: i) a detailed Study on current and potential environmental and socio-economic impacts on the territory of Moldova resulting from operation of the hydro power generation facilities on the Dniester River elaborated; ii) understanding of the Moldovan negotiation team with regards to environmental and social impacts of the Dniester HPC enhanced, as well as their negotiation capacity and iii) public is informed and transparency of the transboundary management of the Dniester River increased.

**D. Approach and methodology**

The contractor will consist from a key **international legal expert**. The work of the contractor will be dedicated to the second component of the project.

Component 2 of the project will focus on offering legal support to the team of negotiators involved in the negotiation of the Agreement for the Functioning of Dniester HPC. Under this specific task an international key legal expert will be contracted. The key legal expert will have the qualifications and experience on negotiating, assessing and drafting similar Agreements and will directly interact with the members of the Moldova’s negotiation group on legal (treaty law, disputes settlement) and environmental issues, to support the team in understanding the legal implications of the particular articles of the Agreement. This expert should render full support to the Moldovan delegation in any aspect of negotiations requested by the Moldovan negotiation team, this may include but not be limited to analysis of the agenda and the essence of the issues under discussion, and preparation of recommendations and draft articles / Annexes to the Agreement.

The support of the international legal expert should include:

1. Analysis of the Rules of exploitation of water reservoirs of Dniester HPC:
2. Legal assessment of the *Rules of exploitation of water reservoirs of Dniester HPC* in order to assess to what extent they ensure the protection of ecosystem services of the in the Dniester downstream to Dniester HPC.
3. Develop recommendation/suggestions on the mechanism of control over the enforcement of the *Rules of exploitation of water reservoirs of Dniester HPC* to be included in the *Agreement on functioning of Dniester HPC*.
4. Analysis of the draft Agreement (and its adjacent Annexes) on the functioning of the Dniester HPC:
5. Providing a legal analysis (strengths and weaknesses) of the draft Agreement.
6. Proposing reasonable modifications in the draft Agreement, and developing additional Annexes, at the request of negotiators (e.g. monitoring of water releases from HPS-2; methodology for yearly damage assessment; mitigation and compensation measures, etc.).
7. Advice on the specific provisions that have to be contained by the draft Agreement and its Annexes for the protection of aquatic flora and fauna of the Dniester river, if the case.
8. Describing the working procedures of a potential bilateral Group/Commission agreeing on a daily basis the dispatching principles of water and water release from Ukrainian cascade of the existing HPPs on Moldovan territory.
9. The lease of land for the functioning of Dniester HPS-2:
10. Assessment of long-term legal implications of the land lease.
11. Providing assistance for the specific way of negotiating the terms of the lease
12. Application of Espoo Convention:
13. Identifying what provisions of the Convention are applicable for infrastructure that was planned before the entering into force of the Convention.
14. Assessing the need for a new environmental and social impact assessment for the existing hydropower infrastructure where the suspicion of significant impacts exists and prepare a draft request to Implementation Committee of Espoo Convention and steps to be taken
15. Analysis of the International legal background (including European Union legislation):
16. Compliance of Dniester HPC upgrade and planned construction of new 6 HPS with the international and Moldovan-Ukrainian bilateral treaties, EU and internationally accepted standards on the use of water.
17. Providing examples of rules (bilateral treaties, agreements etc.) of joint use of shared rivers from other states and lessons learned from the experience of other downstream countries.
18. Describing the experience of other states in the elaboration or/and application of damage assessment methodology for lost eco-system services.

##### **E. Expected Deliverables**

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| **Deliverables/Estimated working days**  | **Estimated date of completion** |
| 1. Inputs to the Rules of exploitation of water reservoirs of Dniester HPC. (5 days)
 | December 25, 2018 |
| 1. Report on the analysis of the draft Agreement (and its adjacent Annexes) on functioning of Dniester HPC. (4 days)
 | December 31, 2018 |
| 1. Report on lease of land for the functioning of Dniester HPS-2. (3 days)
 | January 4, 2019 |
| 1. Report on the application of Espoo Convention. (3 days)
 | January 10, 2019 |
| 1. Report on the analysis of International legal background. (5 days)
 | January 18, 2019 |

**E. Institutional Arrangement**

The contractor will report to the Project Manager and will work in close coordination with the project team and national partners. For documentation and consultation with relevant stakeholders a field visit (up to 3 days) to Moldova could be considered.

**F. Duration of the Work**

20 working days

**G. Duty Station**

The Project’s duty station will be Chisinau (Republic of Moldova). Other options could be considered.

**H. Qualifications of the Successful Individual Contractor**

The Legal expert will have the following qualifications:

* At least Master’s degree (at least 5 consecutive years of graduate studies) in Law and/or other related fields;
* 10 years of professional experience in developing or negotiation of legal and policy documents in environmental field in the Southeastern European (SEE) region;
* 7 years of working experience in the field of environmental law in the SEE region;
* Proven experience in working with international organizations;
* Knowledge in the EU environmental legislation and Multilateral Environmental Treaties and Conventions;
* Knowledge of legal and institutional set up in environmental sector in Moldova and Ukraine;
* Diplomatic and negotiation experience of bilateral environmental Treaties with Ukraine;
* Strong analytical and communication skills;
* Fluency in English. Knowledge of Romanian or Russian would be an advantage.

**I. Schedule of Payments**

The payment will be released in two tranches. First tranche (30% of total sum) will be delivered upon the completion of the tasks for the first output (By December 24, 2018). The second tranche (70%) will be transferred at the end of the delivery of the services.

**J. Recommended Presentation of Offer**

The applicants will present the following documents:

1. The **Letter of Confirmation of Interest and Availability** using the template provided by UNDP;
2. **Personal CV or P11**, indicating all past experience from similar projects, as well as the contact details (email and telephone number) of the Candidate and at least three (3) professional references;
3. **Brief description** of why the individual considers him/herself as the most suitable for the assignment, and a methodology on how they will approach and complete the assignment.
4. **Financial Proposal** indicating a lump sum, all-inclusive fixed total contract price, supported by a breakdown of costs, as per template provided in the Individual Consultant Procurement Notice.

**K. Criteria for Selection of the Best Offer**

The award of the contract shall be made to the individual consultant whose offer has been evaluated and determined based on the following criteria:

1. Technical Criteria weight – **60%**
2. Financial Criteria weight – **40%**

**L. Annexes to the TOR**

Annex 1: Individual Consultant General Terms and Conditions

Annex 2: Offeror’s Letter Confirming Interest and Availability