**Terms of Reference**

**Selection of national 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 **national 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 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. This expert should render full support to the Moldovan delegation in conducting of negotiations, analyze the agenda and the essence of the issues under discussion, and prepare recommendations and draft articles / Annexes to the draft Agreement, if required by the Moldovan negotiation team.

The national legal expert will assist and work in close cooperation with an international legal expert contracted by UNDP. The support of the national legal expert will include:

1. Analysis of the Rules of exploitation of water reservoirs of Dniester HPC that will include:
2. Legal assessment of the *Rules of exploitation of water reservoirs of Dniester HPC* in order to evaluate 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. Analyze national legal provisions regarding the lease of land to foreign countries. Propose relevant amendments of national legislation needed to safely give the land on lease for the consolidation of Dniester river bank near the HPS-2;
5. Clarify the domestic application of Espoo Convention in Moldova and the steps that have to be taken by Moldova for its application in regard to Dniester HPC, if the case;
6. Review of legal aspects of existing national policies of Moldova and Ukraine, legislation, codes, strategies, relevant for transboundary river management and hydropower;
7. Conduct in-depth analysis of international commitments of Moldova and Ukraine on water and environmental governance, transnational rivers, public participation, environmental impact assessment, strategic impact assessment, wetlands and wild birds, polluters pay principle (e.g., Espoo Convention, Convention on the Protection and Use of Transboundary Watercourses and International Lakes, Ramsar Convention, Energy Community Treaty, Association Agreements of Moldova and Ukraine with EU, etc.). The consultant will clarify the legal implications for Moldova and Ukraine on the above mentioned and will make recommendations for Moldovan Government in regard to Dniester HPC;
8. Evaluation of the possibility to implement the national Moldovan strategies in view of the possibility of extension (upgrade) of the HPC and construction of additional 6 HPP upstream;

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

|  |  |
| --- | --- |
| **Deliverables/Estimated working days** | **Estimated date of completion** |
| 1. Report on the analysis of the Rules of exploitation of water reservoirs of Dniester HPC, including the findings of an international expert; (4 days) | **December 25, 2018** |
| 1. Report on the analysis of national legal provisions regarding the lease of land to foreign countries and legal amendments proposal; (4 days) | **January 4, 2019** |
| 1. Report on domestic application of Espoo Convention in Moldova and the steps that have to be taken by Moldova for its application in regard to Dniester HPC, including the findings of an international expert. (2 days) | **January 10, 2019** |
| 1. Report on in-depth analysis of international commitments of Moldova and Ukraine on water and environmental governance; (5 days) | **February 10, 2019** |
| 1. Report of legal aspects of existing national policies of Moldova and Ukraine, legislation, codes, strategies, relevant for transboundary river management and hydropower; (5 days) | **February 21, 2019** |
| 1. Report on evaluation of the possibility to implement the national Moldovan strategies in view of the possibility of extension (upgrade) of the HPC and construction of additional 6 HPP upstream; (5 days) | **February 28, 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. In addition, the contractor will provide assistance to an international legal expert hired by UNDP.

**F. Duration of the Work**

The Legal expert is given 25 working days to complete the tasks during a period of 2,5 months (until February 28)

**G. Duty Station**

Duty station of the Project will be Chisinau (Republic of Moldova).

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

The Legal expert will have the following qualifications:

* PhD Degree in Law or equivalent;
* 10 years of professional experience in development/analysis of environmental legal and policy documents;
* 7 years of working experience in the field of environment;
* Knowledge in the EU environmental acquis and Multilateral Environmental Treaties and Conventions;
* Knowledge of legal and institutional set up in environmental sector in Moldova and Ukraine;
* Fluency in Romanian and Russian. Good working skills in English;
* Experience in academic field and publishing academic articles/materials would be an advantage;
* Experience in working with international organizations would be an advantage.

**I. Schedule of Payments**

The payment will be released in two tranches. First payment will be made upon validation by international expert of support provided for deliverables linked with his assignment (by 18 January 2019). The second payment will be realized upon the completion of remaining tasks, by February 28, 2019 and subject to UNDP approval.

**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.

**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