TERMS OF REFERENCE

Support for the Implementation of Contracts for Difference in Romania

1. Background

In order to meet its 2030 EU targets, Romania intends to develop a Contracts for Difference (CfD) support mechanism to encourage prioritary investments in low-carbon generation technologies that are needed in the Romanian energy sector. The CfD-type mechanism will provide additional benefits and create an attractive and predictable environment for investors, such as:

- Improves revenue safety and stability, by eliminating the exposure to volatile wholesale prices;
- Avoids overcompensation of producers when the electricity price increases above the value of the exercise price;
- Protects the producers from price fluctuations on the market;
- Protects consumers from increase of support payment, when the market price of electricity increases;
- Guarantees a contractual agreement under the law, over a predetermined period, which provides a reasonable level of flexibility for project developers and protection against unanticipated changes;
- Provides increased security for investors: once the contract has been signed, investors will be able to carry out projects without being affected by political risk or by the fact that the development of the market could critically affect the projects’ profitability;
- In order to support the necessary investments, the CfD mechanism must create a clear and transparent framework that addresses the risks related to long-term investments and provides investors with confidence and predictability;
- In line with the development of withdrawals from operation of some capacities, but also with the additional capacity needs (driven by increased demand), new low-carbon production units could benefit from the CfD mechanism based on auctions, in the sense that the support would target the lowest price offered by an investor / developer;

Thus, the materialization of this initiative should be a priority in order to optimize the current market design and stimulate the needed investments in clean energy production. In this respect, the Romanian Government approved a Memorandum with the theme: "General principles regarding the implementation of a Contracts for Difference ("CfD") support mechanism for generation of electricity with low-carbon emissions" (Principii generale privind implementarea unui mecanism de sprijin de tipul Contracte pentru Diferență ("CfD") pentru producerea de energie electrică cu emisiile reduse de carbon").

Within this context, the EBRD aims to engage a consultant to support the Ministry of Economy, Energy and Business Environment (MEEMA) in implementing this mechanism (the “Assignment”).

2. Objectives

The objectives of this Assignment are the following:

(i) Revise the existing Romanian market model, if needed, to accommodate the implementation of a CfD framework;
(ii) Drafting of primary and secondary legislation (and amendments of existing laws, if any are required) for the implementation of the CfD framework, including rules and requirements for a CfD tendering process as well as the required contractual agreements such as the Contract for Differences;

(iii) Provide recommendations regarding the set-up of the CfD Counterparty (potential institution that may become Counterparty, new institutional framework etc) and on measures and regulations to ensure adequate long term funding and creditworthiness of the CfD Counterparty; examine alternative proposals for ensuring CfD funding, other than a tax on consumption, including the use of European funds;

(iv) Drafting the text proposal for the notification of the support scheme to the European Commission (COM) in compliance with the Guidelines on State aid for environmental protection and energy 2014-2020 and European normative acts;

(v) Provide technical assistance to the Romanian authorities during consultations and dialogue with the European Commission (COM) on the support mechanism of Contract for Difference, in order to establish the final form of the mechanism.

3. Principles and input data for work done under this Assignment

The following principles governing Romanian national energy policy shall be taken into consideration by the Consultant for deliverables submitted under this Assignment:

1. Maintaining a diversified and balanced energy mix;
2. Safety in operation and stability of National Power System;
3. Decarbonizing the energy system, by using the most competitive market mechanisms;
4. Ensuring the stability and accessibility of the energy price to the final consumer,
5. Competitive energy production prices;
6. Protection of the vulnerable consumer and reduction of energy poverty;
7. Predictability in the field of primary and secondary legislation in the electricity sector, in order to create a favorable climate for the development of investments in electricity production projects.
8. Safeguarding the environment and protection of stakeholders in maintaining and further developing a sustainable energy system.

The deliverables submitted under this Assignment will take into account the current Romanian legislation in the energy field, the normative acts promoted in the last years at European level with an impact on the energy field (the Clean Energy package for all Europeans, the network codes, the EU Long-term Energy Strategy, the Grean Deal, etc.), as well as the obligation to transpose these acts into national law, as the case may be.

The deliverables will also take into account the evolutions registered at European level and the effort that Romania plans to undertake in the context of the creation of the Energy Union and the joint effort to reach the compulsory goals for the year 2030 in the field of renewable resources, energy efficiency and emissions of greenhouse gases. It will be taken into consideration that the new model of the European electricity market will bring a series of changes in the legislation and related regulations. It is necessary to create favorable market conditions for all low carbon technologies that can participate in achieving the Romanian main objectives of the national energy policy.

4. Scope of Work

Reflecting the objectives of the assignment, the Consultant will need to undertake the following Tasks:
1) **Review of existing legislation and documentation related to the electricity market, to the energy sector in Romania and draft of the new proposed framework for supporting investments in new generation capacities based on low-carbon technologies (i.e., the “CfDs framework”).** The review of the existing legislation and materials will include, but may not be limited to:

a. Electricity law and secondary regulation;

b. Documents related to recent experience of projects under the CfD scheme - in particular identifying any areas of the overall regulatory framework that can be improved;

c. Plans for the development of investments in new generation capacities based on low-carbon technologies and electricity market reforms in line with Romania’s obligation to implement the new European legislation and to achieve the Romanian main objectives of its national energy policy

2) **Provide advice and recommendations on potential refinements to the proposed design and structure of the CfD framework, as described in the Memorandum with the theme: “General principles regarding the implementation of a support mechanism such as Contracts for Difference ("CfD") for the production of low-carbon electricity” approved by the Government of Romania (including those in the annex to the Memorandum), if necessary.** This may include elements such as: the different market prices that may be used as reference prices; the time intervals over which the mechanism is defined; possible provisions for currency and/or inflation indexation; the establishment of a CfD Counterparty, recommendations of reserve prices, mechanisms for long term funding (examine alternative proposals for ensuring CfD funding, other than a tax on consumption, including the use of European funds) etc. In undertaking this task, the Consultant will take into consideration the provisions of the above-mentioned Memorandum, as well as the results of the study of the evaluation of the options for implementing a support mechanism such as “Contracts of Differences” (“CfD”) for the production of low-carbon electricity in Romania carried out by the Ministry of Economy, Energy and Business Environment, including on-going and past work on the design of the CfD mechanism as well as the outcome of public consultations;

3) **Develop a detailed design to adapt the Romanian Market design, if needed, to accommodate a CfD framework and to ensure that wholesale electricity markets design is conducive to markets being liquid and well-functioning (a necessary condition for the sustainability of the support scheme, to ensure the funding of the CfD counterparty).**

The Consultant should take into account that, in order to ensure the success of a CfD mechanism, it may be necessary for beneficiaries to conclude long-term, bilateral contracts under market conditions and in this respect, the regulatory framework will have to ensure the appropriate details regarding the conclusion of the CfD mechanism beneficiaries, of bilateral contracts for the timely sale of the electricity produced, before obtaining the license for the production of electricity, on the centralized competitive markets, in a transparent, public and non-discriminatory way. Currently, this regulatory framework is being finalized by ANRE. The solutions for the implementation of this mechanism will have to take into account the specific conditions of the Romanian market and the impact
on the market participants, especially at the level of the final consumer and on the degree of its sustainability.

4) **Recommend the institutional relationships and draft the financing arrangements for the entity that will be the Counterparty for the CfD and for the tender organiser.** The Consultant’s recommendations should cover, among other elements:

a. Institutions that may play the role of the Counterparty;

b. How the Counterparty should be funded and, if appropriate, how its revenues should be regulated; the framework for financing the activity of the CfD Counterparty and the framework under which economic operators will guarantee the payments to the CfD Counterparty, needed for securing the liquidities and ensuring the maximum level of certainty regarding compliance with payment deadlines for payment of the aid to the CfD beneficiaries;

c. The mechanisms and primary and secondary regulations needed for the functioning of the Counterparty;

d. Additional measures aiming to ensure adequate long term funding and creditworthiness of such Counterparty.

e. The financial flows/guarantees related to collecting the necessary funds and making the related payments, terms and conditions for managing the funds, collections and payments related to the CfD state aid support mechanism, including the manner of creating and the level of the liquidity reserve ensured from the end customers, in order to prevent any temporary negative balance of the Counterparty’s funds for CfD payments;

f. The methodology for calculating the strike price;

g. The methodology for calculating the reference price;

h. The methodology for establishing the reserve prices;

i. Offsetting rules applicable for payments made by CfD beneficiaries and for the amounts collected from the active balancing responsible parties with payment obligations for the end consumers within their own outlines;

j. The master contract for the CfD mechanism, to be signed by the beneficiaries of the CfD mechanism and the CfD Counterparty, including the terms under which certain clauses of the contract can be negotiated/re-negotiated, and the applicable methodology for such cases;

k. The duration of the period for which the CfD support mechanism is granted, and substantiation of such duration;

l. The master document (Agreement/Contract/Convention) to be signed by the CfD Counterparty with each active balancing responsible parties for the collection of the amounts pertaining to the contribution of the end consumers within their outline;

m. Gain-share agreements for sharing the profits and costs under the customised (single) contracts;

n. The methodology by which the CfD Counterparty will monitor the obligations (technical, economical, fiscal, legal) taken by each individual beneficiary of the CfD support mechanism; establishing the structure of the costs for the operation of the CfD and of the manner in which such costs will be recovered.

In making these recommendations, the Consultant should assess a number of factors – in particular, the impact of different options on the creditworthiness of the Counterparty, and the distributional impacts of the funding arrangements.
5) Develop a detailed design and draft the needed regulations and standard forms/applications to be used for a competitive bidding process by which the strike prices of the CfDs is determined for renewable energy projects. The Consultant should address questions relating (but not limited to):

a. The roles and responsibilities of different institutions within the process – for example, the auctioneer, the regulator, etc.
b. Suggestions on limitations on the maximum size of individual projects under the auction;
c. The requirements for bidders to demonstrate that they possess the technical capacity to deliver the project;
d. The requirements for bidders to demonstrate that they possess the financial capacity to deliver the project;
e. The requirements for bidders to demonstrate their legal standing, and the acceptable legal company structures of bidders;
f. The requirements for bidders to demonstrate that the project cannot be sustainable without a CfD;
g. Measures to ensure the bidders’ credibility and that successful bidders will deliver the project with the requested characteristics. This should include arrangements surrounding bid and development/completion bonds and penalties for bidders due to delays or failure in delivering, including (but not limited to) the sizes of these bonds and penalties and the practical arrangements surrounding them (for example, the timelines associated with them, the acceptable creditworthiness of providers, the contractual arrangements underpinning their use, etc.);
h. Selection criteria (e.g. price only, following assessment of technical and financial qualification);
i. Dispute resolution provisions that should apply to the bidding process and the steps leading up to project commissioning;
j. Review the provisions for currency and/or inflation indexation of the support scheme;
k. Additional measures that might be used to enhance the bankability of the project(s) by changing the allocation of risks faced by investors (e.g. guarantees); the framework for financing the activity of the tender organiser;
l. Method of recovering the costs related to the organization of the tender procedure by its organizer.

The recommendations should be based on a transition to a framework that is compliant with the EU’s Guidelines on State aid for environmental protection and energy 2014-2020.

6) Draft Law to provide for the CfD mechanism, and any other primary and secondary legislation needed to implement the CfD framework in the Romanian market – accounting for the implementation of any recommendations provided in previous tasks in agreement with the authorities;

7) Draft the required contractual agreements to implement the CfD framework, such as the Contract for Differences. The Consultant is expected to structure and draft all documentation in a standardized template format, adaptable to different technologies, consisting of: (i) standard part(s) expected not to vary across different technologies, and (ii) parts which necessarily entail technology-specific elements. This Assignment entails drafting the technology-specific parts for selected electricity generation technologies;
8) Draft the notification of the support scheme to the European Commission in compliance with the Guidelines on State aid for environmental protection and energy 2014-2020;

9) Economic modelling of the impact on end consumers and producers in Romania and the impact on neighboring countries, depending on the requests of the European Commission within the approval procedure for the state aid mechanism; and provide support for Romanian authorities during discussion with COM;

5. Deliverables and timeline

The key deliverables as per the Tasks set out under the Scope of Work will be:

1) Report regarding existing European and Romanian legislation framework and approved acts (memorandums/strategies/roadmaps/white papers a.s.o.) related to the energy sector in general and electricity market in particular that have to be considered in connection with the envisaged investments in new generation capacities based on low-carbon technologies as per Task 1 requirements.

2) Report regarding recommendations for amendments to the existing Romanian legal framework and to the approved acts/documents and proposals for supporting implementation of the CfD-type mechanism for supporting low-carbon emissions generation investments as per Task 2 and Task 3 requirements.

3) Report containing drafts of the normative acts of primary and secondary legislation regarding CfD-type mechanism implementation, as well as the related drafts for the needed applications/forms and contracts/agreements/arrangements to be signed by the involved stakeholders/institutions and/or parties in connection with CfD mechanism, as per Task 4, Task 5, task 6 and Task 7 requirements.

4) Report containing the draft of the Notification to be submitted to the European Commission for implementation in Romania of a CfD-type mechanism for supporting investments for generation of electricity with low-carbon emissions together with all the needed economic modelling and impact assessments depending on the requests of the European Commission, as per Task 8 and Task 9 requirements.

5) Technical assistance provided to the Ministry of Economy, Energy and Business Environment during consultations and dialogue with the European Commission on implementation in Romania of a CfD-type mechanism for supporting low-carbon emissions generation investments, in order to establish the final form of the mechanism.

In agreement with the Authorities, selected key deliverables will be required to be delivered in separate English and Romanian versions in editable electronic versions and printed copies.

The Ministry of Economy, Energy and Business Environment, as the beneficiary, will analyze, make observations / comments, including by consulting an Advisory Committee on the preliminary version of the submitted documents. Following the transmission of observations to the provider and, possibly, the organization, by MEEMA, of clarification and consultation sessions, with the involvement of other relevant authorities, the provider will transmit the final form of the mentioned documents. The Ministry of Economy, Energy and Business Environment will approve the final version of the Study, based on the opinion expressed by the Advisory Committee.
The overall length of the Assignment will depend on external factors, but is likely to be up to 24 months.

The timeline for the key milestones in this Assignment will be agreed during the inception phase between all parties in the kick-off meeting. The kick-off meeting will take place within 3 weeks from contract signing and will involve the Consultant, the Bank and the relevant Authorities.

6. Implementation Arrangements

The Assignment will be carried out by the Consultant selected by the Bank, in accordance with the Bank's Corporate Procurement Policy. The Consultant will have an initial meeting with the Authorities at the start of the Assignment to clarify the precise scope of each task. The Consultant may also have several meetings with the Authorities during the course of the Assignment both to provide envisaged assistance as well as to receive feedback.

The Assignment will be managed and overseen by the Bank’s staff headed by the Bank’s Operation Leader, whereas the Authorities will appoint a team member who will be the counterparty of the Bank’s Operation Leader. The team member appointed by the Authorities will serve as the contact person and interface for the Consultant’s and the Bank’s communications with the Authorities.

The Authorities will be responsible for coordinating the work of, and providing ongoing guidance to, the Consultant, as well as for reviewing interim deliverables and overseeing the process of collecting feedback/comments for the Consultant’s deliverables. The Consultant will provide its reports to both the Bank and the Authorities. The Consultant will be responsible for providing suitably qualified interpreters/translators to work with their staff as well as arranging for any required interpreting or translations of documentation if needed.

7. Consultant Profile

The Consultant selected for this assignment will be a firm or a group of firms (in which case only the leading firm will be contracted) with previous related project experience and:

A) Economics/Policy expertise in the design of support schemes for low –carbon energy technologies – preferably, support schemes that rely on electricity market prices as a reference to determine the level of support for low-carbon energy projects, e.g., CfD mechanisms;

B) Legal expertise, with experience in drafting primary and secondary legislation in the electricity sector including power purchase agreements and, preferably, CfDs;

C) Technical expertise and experience in providing technical advice to clients on the design, construction and operation of low carbon generation facilities, potential beneficiaries of CfD;

D) Financial experience in measures and regulations to ensure adequate long term funding and creditworthiness of CfD mechanism and in developing financial flows/guarantees related to collecting the necessary funds and making the related payments, terms and conditions for managing the funds;

E) Preferably, experience in the Romanian power sector, including knowledge of the legislative and regulatory setting and familiarity with the network and grid code.

The Consultant's expert team is expected to include (at least) the following key experts (the “Key Experts”):
1) Key Expert 1: **Team Leader** – Expert in energy policy and regulatory matters with:

- preferably at least 10 years’ experience in project management, specifically in projects related to the power sector;
- proven experience in leading a team of experts and the ability to demonstrate adequate project management skills, managerial skills and team leading experience;
- fluency in English for coordination and report writing purposes;
- considerable experience:
  - in designing support schemes for low-carbon technologies – preferably, support schemes that rely on electricity market prices as a reference to determine the level of support for low-carbon energy projects, e.g., CfD mechanisms; and
  - in regulatory matters of the electricity sector.

2) Key Expert 2: **Legal Expert(s)** with:

- a. at least 5 years (preferably 10 years) of experience in drafting energy sector legislation and regulations relating to low-carbon energy; and
- b. experience in drafting power purchase agreements or, preferably, CfDs.

The team should include experts with both local and international expertise and experience. More than one legal expert can be proposed. In case two (or more) separate legal experts are proposed, the local expert(s) should be fluent in both English and Romanian.

3) Key Expert 3: **Technical Expert** qualified in relevant engineering disciplines with at least 5 years of experience in providing technical advice to clients on the design, construction and operation of low carbon generation facilities, potential beneficiaries of CfD.

4) Key Expert 4: **Financial expert** qualified in relevant financial disciplines with at least 5 years of experience in providing technical advice to clients on measures and regulations to ensure adequate long term funding and creditworthiness and management of financial flows/guarantees related to the CfD mechanism.

The same expert can act across more than one key expert category, and multiple experts may be assigned to a single key expert category. All the key experts are expected to have strong communication skills and be fluent in English. Previous experience in past projects in jurisdictions within the European Union will be considered an advantage.

All proposed team members must be free from conflicts of interest in the responsibilities accorded to them in accordance with EBRD’s Corporate Procurement Policy.