July 13, 2013

Response of EBRD on the Revised CTF Investment Plan for Ukraine

Dear Annette

Please find attached a draft MDB response to Germany's comments on the Ukraine IP Revision.

With kind regards

Andreas Biermann
Senior Manager
Energy Efficiency and Climate Change

4. CTF/TFC.11/8 Update of CTF Investment Plan for Ukraine

Germany provided comments on the Update of the Investment Plan for Ukraine, explicitly withholding approval, following the CTF Meeting in May 2013. A range of specific comments were provided. The MDBs have analysed these comments and in close co-ordination with the in-country task team members jointly provided responses set out in the comment/response matrix below. Questions relating to the MDB response should be addressed to the CTF focal points in EBRD and IFC:

EBRD: Andreas Biermann, Senior Manager, biermana@ebrd.com
IFC: Joyita Mukherjee, Senior Operations Officer, jmukherjee1@ifc.org

The MDBs propose to annex the response matrix, once finalized, to the Ukraine Investment Plan, rather than changing text in the main plan, apart from the text identified under item 1.

German comments	MDB Response
1. In order to approve the rev IP for Ukraine and as discussed during the CTF TFC Meeting in May/Washington the rev IP should be amended as follows: On page 24 the "Residual Risk" for "Sector policies and institutions" has to be increased from "Moderate" to "High" and under "Mitigation Measure" the following has to be added: "There are severe administrative and legislative hurdles to wind projects in the Ukraine, which have to be tackled. One is the minimum local content rule for investment components that are in principle eligible for the 'green tariff' and the other the intricate process of obtaining a construction permit."	1. We agree with the revision of the risk level. We are however not in agreement that the issues are as severe as painted by the German comments, and would instead propose the following wording: "There are administrative and legislative hurdles to renewable energy projects in the Ukraine, which have to be tackled by the Ukrainian government in order to ensure that the market can continue to develop. The primary hurdle is the minimum local content rule for investment components that are in principle eligible for the 'green tariff'. The government should also further reform the process of obtaining a construction permit in order to

	reduce the administrative burden on renewable energy project developers."
2. Investment Plans have to reflect the legal/regulatory framework of the country correctly. In the case of the Update of the CTF Investment Plan for Ukraine this is not the case. Due to the below mentioned two overwhelming policy constraints not described in this revIP, **it can not be endorsed without corresponding amendments.** We expect that these amendments should (i) reflect the legal/regulatory framework correctly and (ii) explain, how the IP can be successful in spite of the following constraints	2. We provide responses on your comments below which we propose to annex to the investment plan in a public annex.
3. Minimum local content: By Ukrainian legislation, from 2013 onwards, up to 30%, and from 2014 onwards up to 50% of all investments components that are in principle eligible for the "Green Tariff", must be of Ukrainian origin. Due to the political nature of this provision which is badly aligned with the country's industrial realities, this is widely considered a grave setback for the development of Renewable Energies in the country.	3. We agree that this is not a good situation, and have made this point to the Ukrainian government in writing at ministerial level. At the same time, we do not see this as a fundamental risk for the CTF as we continue to see wind and biomass projects being developed in Ukraine. We expect that following the conclusion of the current WTO case the Ukrainian government will implement changes to the legislation to come into compliance with the WTO ruling. While this process is ongoing, MDBs propose to continue with the development of projects to support renewable energy growth in Ukraine.
4. According to a number of Ukrainian experts KfW is currently working with, the local content rule is likely to bring to a standstill all development of new wind power parks.	4. We disagree on the fundamental point, and we continue to see wind power park projects coming forward to us in Ukraine. The best example is of course the recent project which the CTF TFC approved for co-financing in May 2013.
5. No manufacturer in the Ukraine can adhere to this requirement as many components are not, or not in sufficient quality, produced in the Ukraine.	5. We agree that this is a concern, but continue to see projects being brought forward. We expect a resolution of 3. to alleviate this.
6. In addition, the certification process for each component is intransparent. This sheds severe doubts about the overall feasibility and sustainability of the CTF intervention.	6. See answer above. Nevertheless, we do not think that this raises fundamental doubts about the feasibility and sustainability of the CTF intervention. Regarding the feasibility, we see projects continuing to develop, and this is not a concern. Regarding the sustainability, we expect that the laws will be amended in

	line with the forthcoming WTO ruling, and that this will alleviate the long-term concern. In the meantime we move ahead with building the market for renewables from the ground up, while the high-level political issues are being resolved in parallel in keeping with the timeline of the WTO process.
7. The same applies to biomass projects where the potential is among the greatest in Europe. Similarly, the key constraints are that local suppliers cannot fulfill the minimum local content requirements.	7. See above. EBRD has a number of biomass projects in the pipeline for USELF, and is confident that this market segment is working.
8. Severe administrative and legislative hurdles: Only land belonging to the state and designated as “land on energy use” may be used for wind power projects. Use of private property with agricultural designation, in contrast, is prohibited. Further complications arise from the intricate processes of obtaining a construction permit. We feel the risks and potential consequences from these extraordinarily cumbersome processes and legislative are not sufficiently addressed in the IP.	8. In this case, we don’t see this as a barrier as this is required by the Land Code of Ukraine and we think is also a normal practice that power generation plants should use the “energy/production” land and not the agricultural one. All approved USELF projects (7 so far) have not experienced any problem with that provision and have complied with the Ukrainian Land Code in this respect. The construction permitting process was substantially simplified in 2012, especially for small and medium-sized projects and does not represent a barrier for RE development in our view. We also think that similar restrictions are in place in countries with more developed renewable energy markets, such as Germany, or the UK. In the specific case of the recently approved project, the MDBs can confirm that the project sponsors have been able to secure both the land and construction permits, thereby demonstrating that it can be done and that the issue does not pose a risk for the proposed program.