**Record of commercial and legal eligibility checks on potential recipients (KEP)**

When conducting commercial and legal eligibility checks, the officer responsible for the commission/cost centre of the project can request advice and support from commercial staff at the GIZ country office or – particularly for large contracts – engage the services of a national/international auditor. The potential recipient may under no circumstances be involved in the checks. However, the overall assessment must always be made by GIZ.

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| **Potential recipient, official location**  (NB: Check the eligibility of the direct contractual partner, not that of a local branch as this is not an independent legal entity) |  |

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| **Lead executing agency**  As defined in the project processing system PBS and the offer (including the conclusion of an implementation agreement) | ( ) Yes ( ) No |

**People involved in the eligibility checking process**

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| Name(s) |  |
| Organisation unit, firm (if applicable) |  |

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| Place |  |
| Date |  |

**Potential recipient**

(Please summarise key information here and attach any explanatory notes as an appendix)

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| **Eligibility criteria** | **Assessment** |

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| **1.** **Sanctions list check**  The people involved in the eligibility checking process shall conduct a manual sanctions list check in accordance with P+R and attach the documentation (screenshot) as an appendix.  See Guidelines for instructions on the eligibility criterion (Section 3.1) |  |

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| **2.** **Legal personality**  What is the legal form of the potential recipient? How is the potential recipient registered? Provide evidence of legal form and registration in accordance with the legal provisions applicable in the country in which the institution/organisation is based. Please attach extracts from the appropriate register/formation documents showing the location of the institution/organisation’s registered office and the year it was established (if not shown in the register entry)/tax number or other forms of substantiating documentation generally required in the country.  In the case of ministries and state institutions, does it have a permanent or temporary mandate?  See Guidelines for instructions on the eligibility criterion (Section 3.2) |  |

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| **3.** **Public-benefit status**  Does the potential recipient have public benefit status? Does it have non-profit status under local laws? Submit articles of association and register entry or comparable documents if the partner country’s legal system recognises a status of ‘public-benefit institute’ that is comparable to one provided for in German law. In case of doubt, seek advice from a local lawyer (e.g. the lawyer who acts for the country office).  Are the potential recipient’s usual activities located within the ‘public-benefit sector’? Statement on the potential recipient’s website.  Is the intention (according to the project proposal) to use the funds provided under the project for tax-privileged purposes, i.e. would the potential recipient’s work have tax-privileged status if it were performed in Germany?[[1]](#footnote-1)Submit a valid exemption certificate, a corporation tax assessment or an official statement from the tax office in the case of German recipients.  See Guidelines for instructions on the eligibility criterion (Section 3.3) |  |

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| **4.** **Accounting**  The bookkeeping system should make it possible for an expert third party to gain an overview of the company’s business transactions and financial situation within a reasonable amount of time. Check whether an appropriate bookkeeping system exists and is used by qualified staff. Also check the time recording system.  See Guidelines for instructions on the eligibility criterion (Section 3.4) | Is the national accounting standard complied with?  ( ) Yes ( ) No  Are there records of income and expenditure?  ( ) Yes ( ) No  Is there an electronic  bookkeeping system?  ( ) Yes ( ) No  If so:  Please state which:  Are the annual financial statements drawn up properly?  ( ) Yes ( ) No  Is there qualified staff?  ( ) Yes ( ) No  Is there a time recording system?  ( ) Yes ( ) No  If so, is it:  ( ) manual ( ) electronic |

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| **5.** **Contract award procedures**  Are there rules which comply with national legislation? Does the potential recipient apply them correctly and can this be proven?  (Valid legislation on public procurement, implementation, assessment results)  See Guidelines for instructions on the eligibility criterion (Section 3.5) | Information on the individual contract:  Is it planned to procure services and materials and equipment?  ( ) Yes ( ) No  As a general rule  Does the potential recipient have its own written contract award rules?  ( ) Yes ( ) No  Are the regulations applied correctly and is there proof?  ( ) Yes ( ) No  Do these regulations meet national contract award standards?  ( ) Yes ( ) No |

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| **6.** **Internal and external controls**  Existence, mandate, quality of internal control bodies (observance of the following principles: transparency, cross-check principle, separation of functions, minimum information).  External audit bodies and audit reports, including those of other donors.  See Guidelines for instructions on the eligibility criterion (Section 3.6) |  |

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| **7.** **Previous experience**  Extent and quality of technical and administrative implementation of previous financing arrangements. Findings of financial audit reports produced by GIZ.    If GIZ has no experience of implementing financing arrangements with the potential recipient, other donors should be named (if they exist).  See Guidelines for instructions on the eligibility criterion (Section 3.7) | Does GIZ have experience of implementing financing arrangements with the potential recipient?  ( ) Yes ( ) No  Is this experience positive?  ( ) Yes ( ) No  Enquiry to Financial Management – Contracts section on: \_\_\_\_\_\_\_\_\_\_\_  Name of donor: \_\_\_\_\_\_\_\_\_\_\_  Amount of financing: \_\_\_\_\_\_\_\_\_\_\_ |

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| **8.** **Compliance with the law and anti-corruption**  Has the above institution broken the law and/or have allegations of corruption been raised or relevant investigations conducted that involve the institution and, where known, its executive staff members/management?  See Guidelines for instructions on the eligibility criterion (Section 3.8) | ( ) Research did not provide any such information dating from the past five years.  ( ) Research and/or voluntary disclosure provided hits from the past five years. However, the recipient processed these cases properly and was able to refute the relevant allegations.  ( ) There are current indications that remain to be clarified, or investigations are under way.  ( ) There are serious confirmed cases. |

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| **9.** **Safeguards+Gender (from EUR 500,000)**  1. Are procedures and capacities in place to identify, analyse and check appropriately and in good time any unintended negative impacts of the activities to be financed on the environment, climate change (mitigation and adaptation), conflict and context sensitivity, human rights and gender equality, and to take suitable measures to avoid or mitigate such impacts?  (Possible sources: Corporate strategies/background papers on the above cross-cutting themes or on how the potential recipient addresses them).  2. Does the organisation/institution have its own gender strategy or policy? Does it have the experience and capacity required to promote gender equality (e.g. gender experts, staff with adequate gender expertise)?  See Guidelines for instructions on the eligibility criterion (Section 3.9) | Procedures and capacities to avoid unintended negative impacts are in place in the following areas:  ( ) Environment  ( ) Climate change (mitigation and adaptation)  Conflict and context sensitivity:  ( ) Human rights  ( ) Gender equality  If one of these boxes has not been ticked, a voluntary commitment is required.  Procedures and capacities exist to promote gender equality:  ( ) Yes ( ) No  If one of these boxes has not been ticked, a voluntary commitment is required. |

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| **Overall risk assessment based on the commercial and legal eligibility check**  (to be filled in by the officer responsible for the commission/cost centre of the project)  The recipient is legally/commercially eligible to implement a financing arrangement and  a financing contract can therefore be entered into.  Financing agreement  Grant agreement  Subsidy agreement (=Zuschussvertrag)  A financing/grant/subsidy agreement can be entered into with the following **accompanying measures / Risk-reduction measures**, which must be contractually agreed or the project must assume responsibility and ensure documentation:  (If necessary, list in the annex and inform the unit that draws up the agreement (GIZ country office or GIZ Head Office (E2B0).  The recipient is **not yet** legally/commercially eligible to implement a financing contract. However, a **local subsidy** can be agreed.  **No** financing contract can be signed./ **No contract** can be entered into with this recipient. |

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| **Designation of the recipient by name** **in the commissioning party’s offer**  (does not apply to local subsidies)  The officer responsible for the commission ensures that the recipients of any funds made available under financing, grant or subsidy agreements are designated by name in the commissioning party’s offer.  Designation of the recipient by name ...  is already available  The name of the recipient will be submitted before the contract is signed and passed on to Contract Management. |

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| **Forwarding of funds by the recipient to third parties**  (does not apply to local subsidies)  If funds are to be forwarded by the recipient to third parties (final recipients), this must be stated in the description of the measure. This does not refer to purchases of materials/equipment or services.  In this context, the identity of the final recipient must be checked and documented before the contract is signed, whereby the same guidelines apply in relation to commercial and legal eligibility checks. The documentation covers at least the legal personality and public-benefit criteria.  If the final recipient has not been confirmed prior to signing the contract, the potential final recipients must be made known to GIZ in writing, and GIZ’s approval obtained, before any funds are forwarded.  Will funds be forwarded to third parties under this financing arrangement?  No  Yes (Attach eligibility checks (legal personality and public-benefit nature) for final recipient) |

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| **Signatures**   |  |  |  |  | | --- | --- | --- | --- | |  | Family name, given name (in block capitals): | Signature | Date | | **Officer responsible for the commission/cost centre**  (or officer responsible for the budget) - MANDATORY: |  |  |  | | **1.** **People involved in the eligibility checking process**  **Officer**  (where applicable) |  |  |  | | **2.** **People involved in the eligibility checking process**  **Officer**  (where applicable) |  |  |  | |  |  |  |  | |

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| **(To be filled in by the unit that draws up the agreement (GIZ country office or GIZ Head Office (E2B0)):**  A plausibility check has been carried out.  The overall assessment is confirmed.  Yes  No  Date Signature of unit that draws up the agreement  (GIZ country office or GIZ Head Office (E2B0) |

**NB:**  **For cofinancing arrangements – please observe the checklist (see next page)**

**Checklist for cofinancing arrangements**

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| **1.** **Name of cofinancier:**  EU cofinancing  □ Delegation Agreement  □ Pillar Assessed Grant  □ Multi-Beneficiary Agreement |

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| **2.** **Has the cofinancing agreement already been signed?**  □Yes  □ No, expected date of signing: |

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| **3.** **Term of the cofinancing agreement:** |

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| **4.** **Is subcontracting and the forwarding of funds permitted under the cofinancing agreement?**  □ Yes □ No |

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| **5.** **Does the cofinancing agreement allow GIZ to apply its own procurement rules with respect to both contracts for services and financing arrangements?**  □ Yes Please specify provision in the cofinancing agreement  □ No Please specify provision in the cofinancing agreement |

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| **6.** **Does the cofinancier require a bank guarantee?**  □ Yes □ No |

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| **7.** **Are there any special provisions in the cofinancing agreement that must be included in the subcontracts?**  □ Yes Please give details □ No |

* **Always attach the cofinancing agreement to this document.**

1. According to Section 52 (2) of the German Fiscal Code, tax privileges are granted for the ‘advancement of upbringing, adult education and vocational training’ (no. 7); the ‘advancement of nature conservation and environmental protection’ (no. 8); the ‘advancement of development cooperation’ (no. 15) and the ‘advancement of equal rights for women and men’ (no. 18). [↑](#footnote-ref-1)