

Memorandum of Understanding for the Ukrainian Anti-Corruption Initiative

12 May 2014

Introduction

The Ukrainian Anti-Corruption Initiative (the “Initiative”) brings together representatives of the Government of Ukraine, business associations, and international financial institutions (“IFIs”) (together the “Parties”). The Parties recognise the importance of accountability, transparency, and the rule of law in the proper functioning and effective regulation of the Ukrainian economy. They also acknowledge the resolve of the current administration to address the issue of corruption and the unfair treatment of business in Ukraine. In addition to these, the Parties’ want to express their common principles and commitments to action by way of this Memorandum of Understanding.

Basic principles

The need for action

Principle 1

The Parties acknowledge that systemic corruption and unfair business practices have caused severe damage both to Ukraine’s business climate and to the country’s economy as a whole. They further agree that substantial efforts to combat corruption and the unfair treatment of business are needed to improve the business climate in Ukraine and support its economic growth. They agree that Ukraine must ensure that its markets are open and efficient and that all its laws are certain and are applied impartially, consistently and fairly by the courts and the executive branch alike.

The Parties are convinced and agree that an effective response to corruption and the unfair treatment of business requires a multi-party approach and, specifically, their collaboration. Accordingly, the Parties agree to act together in order to combat corruption and the unfair treatment of business and to take actions to improve the business climate in Ukraine as well as Ukraine’s performance in the areas of anti-corruption and governance.

The role of government

Principle 2

The Parties acknowledge the government’s constitutional mandate to develop and strengthen a democratic, social and law-based state, and to ensure the enjoyment of human rights and freedoms in Ukraine. They view the right to property and the right to engage in lawful entrepreneurial activity as essential safeguards for the market economy and individual and organisational liberties. All Parties affirm that the principles of transparency, accountability, impartiality, and legality should guide all government action. The government must ensure that its laws are clear, fair and consistently applied; it will work to ascertain and address the systemic causes of corruption and the unfair treatment of business.

The Parties' acknowledgement of the need for good governance is no less acute with regards to the exercise of judicial functions and the fair administration of laws. The Parties also recognise, acknowledge and welcome the Government's commitments, obligations and efforts to improve the business climate in Ukraine.

The role of business

Principle 3

The Parties acknowledge the contribution of responsible businesses to economic growth and development in Ukraine. Responsible businesses obey the law. Respect for the environment and human rights are also fundamental principles for business to uphold. Businesses do not engage in bribery and they publicly reject corruption in all its forms.

The role of IFIs

Principle 4

The Parties acknowledge the importance of the IFIs' collective contribution to the development of Ukraine. Acting together, IFIs support local businesses, help attract foreign investment, and contribute to improvements in the investment climate. The Parties recognise the commitment of the IFIs to this Initiative and their willingness to work cooperatively to identify and, implement measures aimed at combating corruption and the unfair treatment of business in Ukraine.

The problem of corruption

Principle 5

The Parties condemn all forms of corruption, including bribery of public officials (including but not limited to: officials of local self-government bodies, state collective bodies, subjects of natural monopolies and economic entities to which the state has delegated corresponding management, governing, regulatory, or other functions), political candidates or parties, party officials and private sector employees.

The Government of Ukraine and the private sector are mutually committed to ensuring that their officers, employees, agents, and other stakeholders refrain from corrupt practices. They accept their responsibility to implement procedures, processes and structures to prevent, detect, investigate, and respond to corruption as an unfair business practice and a crime.

In particular, they agree to communicate their anti-corruption commitments to all stakeholders, guiding them on how to distinguish between legal and illegal business conduct, and legal and illegal conduct in public life. Transgressions should receive an effective, proportionate and dissuasive response. All anti-corruption compliance measures should meet international and European standards defined, in particular, in the UN Convention against Corruption, the OECD Convention on Combating Bribery of

Foreign Public Officials in International Business Transactions and other relevant OECD Recommendations as well as in the Council of Europe Criminal and Civil Law Conventions on Corruption.

The Parties acknowledge that the implementation and enforcement of rules of good conduct and professional ethics, in both public and private sectors, is an effective anti-corruption tool.

The Parties recognise the role of whistle-blowers in detecting and preventing corruption as well as the need to provide them with effective protection.

The Parties acknowledge that raising awareness of anti-corruption legislation and of the existing tools for preventing corruption; promoting intolerance to its existence, sharing information regarding the ways in which it might be effectively eliminated are all important measures in overcoming corruption.

The problem of unfair treatment of business

Principle 6

The Parties are united in their commitment to non-discriminatory and legally certain economic regulation of business in Ukraine. The Parties expect legislative and regulatory acts affecting business to be precise and consistent so as to avoid their selective application. They acknowledge, furthermore, the critical role of independent and impartial courts in protecting legitimate economic interests, enforcing laws against corruption, and ensuring the fair treatment of business. They underline their commitment to measures that ensure that judges are well trained, and committed to conducting themselves in office with the utmost integrity.

The need for a business ombudsman institution

Principle 7

All Parties agree on the need for, amongst other things, a new and independent institution that responds to the unfair treatment of business. The establishment of the Business Ombudsman Institution is a fundamental goal of this Initiative. The Business Ombudsman Institution must be independent; it must work efficiently; and it must be guided by a profound understanding of commercial, community, and regulatory concerns in Ukraine.

The importance of implementation and consultation

Principle 8

The Parties are aware that the success of this Initiative will contribute to the credibility of other efforts to strengthen governance in Ukraine. They hereby affirm their determination to undertake sincere,

diligent, and effective efforts to implement this Memorandum and to inform their respective constituents about the progress of this Initiative.

Aware of the important work already undertaken by dedicated government agencies, business associations, non-governmental organisations, businesses, and individuals, the Parties commit to consulting broadly with other stakeholders and to incorporating their perspectives into decisions taken within the context of this Memorandum.

Commitments of the Parties to action

Commitment 1: Creation of the Group of Parties

The Parties hereby establish the Anti-Corruption Initiative for Ukraine. The Initiative works through the Group of Parties, which is comprised of the Parties' duly authorised representatives, as well as observers from civil society associations to be nominated by the Parties.

The Group of Parties is responsible for the implementation of this Memorandum and will act as the governing body of the Business Ombudsman Institution to be established in accordance with Commitment 2.

Whenever possible, the Group of Parties will take decisions on a consensus basis. Voting rights will be in three equal blocs: (i) the Government of Ukraine, (ii) the IFIs, and (iii) the business associations. The Group of Parties will set forth its other procedures in a separate document. When the Group of Parties cannot reach a consensus, it will decide by two-thirds majority vote except in respect of appointment of the Ombudsman in which case its decision has to be a unanimous one.

Commitment 2: Establishment of the Business Ombudsman Institution

The Parties agree to establish the Business Ombudsman Institution and to use their best endeavours to support and contribute to the Institution and its work.

The Parties agree that the Business Ombudsman Institution shall have the following fundamental features:

- 1) Mandate: The Business Ombudsman Institution:
 - a. Receives, examines, and facilitates the resolution of complaints by business of unfair treatment including corruption; and
 - b. Ascertains the systemic causes of the unfair treatment of business and corruption, and shares its' findings with the public and the appropriate public authorities.

To carry out its mandate, the Business Ombudsman Institution will have recourse to all appropriate avenues of redress. The Business Ombudsman Institution will also have powers to issue public reports in accordance with Commitment 3, below. The Parties acknowledge that the Business Ombudsman Institution is not a law enforcement agency and that it will have no powers to conduct criminal investigations.

- 2) Structure: The Business Ombudsman Institution consists of the Ombudsman, him- or herself and two deputies and a secretariat. The Ombudsman and the two Deputies will be appointed by the Group of Parties, acting unanimously. Dismissal of the Ombudsman or the Deputies may

only take place with the support of at least a two-thirds majority of the Group of Parties (i.e. two blocs). The Ombudsman shall, in turn, appoint members of the secretariat.

- 3) Independence: The Business Ombudsman Institution is independent of government and all other stakeholders. It shall not be limited in its ability to decide which matters to bring to the appropriate authorities or in its powers to publicly report on the systemic causes of the unfair treatment of business and fight against corruption.
- 4) Funding: The Parties shall endeavour to ensure that the Business Ombudsman Institution is adequately funded, which may include in cash or in kind contributions.

Commitment 3: Independent Reporting

The Parties agree that the Business Ombudsman Institution, having shared its report on the systemic causes of the unfair treatment of business and state of the fight against corruption with the Group of Parties will then make public its findings in a published report.

Commitment 4: Further Implementation

The Parties reaffirm their adherence to the Principles set out in this Memorandum of Understanding and commit to the establishment of the Business Ombudsman Institution. The Group of Parties will continue to work towards implementation of other concrete measures to address the broader problems of corruption and the unfair treatment of business in Ukraine.

The content of this Memorandum is an expression of intent to cooperate and does not create any legal rights or obligations under international or national law.

For the Government of Ukraine

European Bank for Reconstruction and Development

Organisation for Economic Co-Operation and Development

American Chamber of Commerce in Ukraine

European Business Association

Federation of Ukrainian Employers

Ukrainian Chamber of Commerce and Industry

Ukrainian League of Industrialists and Entrepreneurs