

# FRAMEWORK AGREEMENT

between

UKRAINE

and

EUROPEAN INVESTMENT BANK

Luxembourg, 14 June 2005

MADE BETWEEN:

Ukraine, represented by the Cabinet of Ministers of Ukraine,  
12/2, Hrushevskogo str., Kyiv, 01008, Ukraine, represented  
by Mr Oleg Borysovykh Rybachuk, Vice-Prime Minister,

hereinafter referred to as "**Ukraine**",

of the one part, and

European Investment Bank, having its Head Office at  
100, boulevard Konrad Adenauer, L – 2950 Luxembourg -  
Kirchberg, Grand Duchy of Luxembourg, represented by  
Mr Philippe Maystadt, President,

hereinafter referred to as the "**Bank**",

of the other part,

HAVING REGARD TO the Partnership and Co-operation Agreement between the European Communities and their Member States and Ukraine, signed on 14 June 1994 and to other bilateral agreements between the European Communities and Ukraine concluded thereafter;

DESIRING, within the framework set by the decisions of the Council of the European Union, to facilitate the granting of loans by the Bank for investment projects of interest to Ukraine, and for that purpose to extend protection to such projects and to ensure rights and privileges for the Bank pursuant to this Agreement,

HAVE AGREED AS FOLLOWS:

## **ARTICLE 1**

### **Definitions**

For the purposes of this Agreement:

"Beneficiary" (or collectively "Beneficiaries") means the State of Ukraine, any person, whether a natural person or a legal person established under applicable laws (for instance a borrower from the Bank, a co-debtor, a guarantor or an owner of a Project), receiving the benefit of financing provided by the Bank for any Project;

"Project" means any investment project, which the Bank finances directly or through an intermediary, and which satisfies the following criteria:

- (i) it is located in the territory of Ukraine, or its financing by the Bank is effected in the territory of Ukraine, or it is related to a Beneficiary in Ukraine, and
- (ii) the government of Ukraine requests financing for it or acknowledges that the financing falls within the scope of this Agreement,

where the Bank agrees to the financing on a date after the date of entry into force of this Agreement or expressly in expectation of its execution or entry into force;

"Tax" means any tax, imposition, duty, levy, withholding or fiscal charge whatsoever, whether national, regional or local;

"EC" means European Communities.

## **ARTICLE 2**

### **Bank's Activity**

The Bank may in accordance with this Agreement freely pursue within the territory of Ukraine the activities envisaged by the Bank's Statute, including the borrowing of funds under the laws and regulations of Ukraine by means of all instruments permitted thereby, as well as the holding, use and disposal of such funds and the operation of accounts in any currency. In particular the Bank may, on the basis of its appraisal of a Project, decide whether, and on which terms and conditions, to grant finance in support of it.

**ARTICLE 3**  
**Taxation of Bank**

Interest and all other payments due to the Bank and arising out of activities envisaged by this Agreement, as well as the assets and revenues of the Bank connected with such activities, shall be exempt from Tax.

**ARTICLE 4**  
**Currency Convertibility and Transfer of Funds**

Throughout the life of any financial operation concluded pursuant to Article 2 of this Agreement, Ukraine shall ensure that:

- (a) Beneficiaries may convert into any fully convertible currency, at the prevailing market exchange rate on the due date, the amounts in the national currency of Ukraine necessary for the timely payment of all sums due to the Bank in respect of loans, guarantees and any holdings in the capital of undertakings in connection with any Project;
- (b) such amounts shall be freely, immediately and effectively transferable outside the territory of Ukraine;
- (c) the Bank may convert into any fully convertible currency, at such prevailing market exchange rate, the amounts in the national currency of Ukraine received by the Bank by way of payments arising in respect of loans, guarantees and holdings, or any other activity and that the Bank may freely, immediately and effectively transfer the amounts so converted outside the territory of Ukraine; or, at the Bank's option,
- (d) the Bank may freely dispose of such amounts within the territory of Ukraine; and
- (e) the Bank may convert into the national currency of Ukraine, at the prevailing market exchange rate, any amounts in any fully convertible currency.

**ARTICLE 5**  
**Treatment of Projects**

Ukraine shall ensure that Projects financed by the Bank pursuant to this Agreement, as well as contracts awarded for the execution thereof, benefit, in respect of fiscal, customs and other matters, from treatment no less favourable than that which is accorded to projects or contracts financed by any other international financial institution or that accorded to residents of Ukraine, whichever is the most favourable.

Ukraine shall extend to each Project full and constant protection and security against expropriation and public unrest.

**ARTICLE 6**  
**Public Tendering**

The Bank may make its financing of Projects conditional upon the arrangements for participation in tenders and other competitive procedures for the award of contracts for works, goods and services being in accordance with the Bank's applicable rules and procedures.

**ARTICLE 7****Bank Status and Treatment**

The Bank shall enjoy full legal personality in the territory of Ukraine, including in particular the capacity to contract, to acquire and dispose of movable and immovable property and to be party to legal proceedings.

The Bank shall enjoy in respect of its activities in the territory of Ukraine the treatment accorded to the international financial institution, which is most favoured in respect of any such activity.

In particular, the Bank shall have free access to the national financial market in Ukraine in accordance with the laws of Ukraine and its obligations and securities shall be treated on terms, including terms as to Tax treatment, market regulations, approval procedures, disclosure obligations, at least as favourable as those accorded to the most favoured international financial institution.

**ARTICLE 8****Bank Privileges and Immunities**

- (1) The assets of the Bank shall be exempt:
  - (a) from search and all forms of expropriation;
  - (b) from the levy or imposition of any measure of execution or distraint prior to the award of a final judgement, not subject to appeal in any jurisdiction, against the Bank, rendered by a court of competent jurisdiction.
- (2) Representatives of the Bank, while they are engaged in activities connected with or in implementation of this Agreement, shall enjoy at least the following immunities and privileges:
  - (a) immunity from legal and administrative proceedings in respect of acts performed by them in their official capacity, except in cases of damage arising from a road traffic accident caused by its representatives or where the Bank waives such immunity of its representatives;
  - (b) diplomatic privileges and facilities accorded by Ukraine for official communications, for the transmission of documents and business travel.

**ARTICLE 9****Settlement of Disputes over Financing by the Bank**

Any dispute arising between the Bank and Ukraine regarding the financing of a Project shall be settled by final and binding arbitration in accordance with the UNCITRAL Rules and Ukraine shall ensure the execution of any such decision within its territory.

Ukraine undertakes, in respect of any dispute arising between the Bank and a Beneficiary (other than Ukraine) regarding the financing of a Project:

- (i) to ensure that the courts of Ukraine have the authority to recognise a final decision delivered by due process by a court or tribunal of competent jurisdiction, including the Court of Justice of the European Communities or any national court of a member state of the EC or any arbitration tribunal; and
- (ii) to ensure the execution of any such decision in accordance with its applicable national rules and procedures.

**ARTICLE 10**  
**Subrogation**

The rights conferred on the Bank by this Agreement may be enjoyed and exercised:

- (i) by the Bank both in its own name and, to the extent that the EC has made payment to the Bank in respect of any guarantee or insurance concerning any loan concluded pursuant to this Agreement, as representative of the EC; or
- (ii) as the case may be, by the EC itself by virtue of a right of subrogation.

**ARTICLE 11**  
**Co-operation**

The Government of Ukraine and the Bank shall discuss, on a regular basis, objectives, criteria of providing loans, and activities of the Bank in Ukraine.

The Government of Ukraine shall respond in writing within 60 days of receipt to requests made by the Bank for its acknowledgment that a Project financing proposal falls within the scope of this Agreement.

Both the Government of Ukraine and the Bank undertake to inform each other in a timely manner of any measure or proposed measure on their part, or of any other circumstance that may be reasonably expected to affect materially the rights and interests of the other party under this Agreement.

**ARTICLE 12**  
**Settlement of Disputes**

- (1) Any dispute, disagreement, controversy or claim (together referred to as a "Dispute") arising in connection with the existence, validity, interpretation, implementation or termination of this Agreement shall to the extent possible be settled amicably by agreement between Ukraine and the Bank.
- (2) If the dispute cannot be amicably settled by Ukraine and the Bank within 60 (sixty) days of the notification of the dispute by either of those parties, the dispute shall be settled by final and binding arbitration in accordance with the Permanent Court of Arbitration Rules for Voluntary Arbitration between International Organisations and States in effect at the date of this Agreement.
- (3) The number of arbitrators shall be three. The language of the arbitral procedure shall be English. The arbitration proceedings shall take place in the Hague, the Netherlands. The nominating authority shall be the Secretary-General of the Permanent Court of Arbitration.
- (4) Unless otherwise agreed, all submissions shall be made and all hearings shall be completed within six months of the constitution of the arbitral tribunal. The tribunal shall render its decision within 60 (sixty) days following the delivery of the final submissions.

**ARTICLE 13**  
**Entry into force**

This Agreement shall enter into force upon the day following the date on which the Bank confirms to the Government of Ukraine its receipt of a certified copy of the latter's instrument of ratification or other instrument mutually agreed between Ukraine and the Bank, as well as of a legal opinion acceptable to the Bank as to the legal force of this Agreement.

**ARTICLE 14**  
**Expiry**

This Agreement is concluded for an unlimited period of time.

The Bank may by notice in writing to Ukraine terminate this Agreement or release Ukraine from all or any of its obligations under this Agreement. Unless otherwise stated, the giving of any such notice shall not affect the rights and privileges acquired by the Bank in respect of Projects and financial operations outstanding at the date of the notice.

Ukraine may by a 6-month prior written notice to the Bank terminate this Agreement. The giving of any such notice shall not affect the rights and privileges acquired by the Bank in respect of Projects and financial operations outstanding at the date of taking effect of such notice in the territory of Ukraine.

**ARTICLE 15**  
**Disclosure**

After the entry into force of this Agreement, Ukraine shall ensure its publication in accordance with the laws of Ukraine. Ukraine agrees that following this publication, disclosure of this Agreement to Beneficiaries in respect of loans granted for Projects under this Agreement is authorised and will not violate any applicable regulation or ruling of any competent governing body.

**ARTICLE 16**  
**Address for Communications**

The parties agree that any communication arising in the course of the operation of this Agreement may be addressed to their respective addresses set out as follows:

For Ukraine: 12/2, Hrushevskogo str., Kyiv, 01008, Ukraine

For the Bank: 100, boulevard Konrad Adenauer, L-2950 Luxembourg

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed the present Agreement in two authentic originals in the English language, and two originals in the Ukrainian language, each page having been initialled by H.E. Mr Roman Shpek, Ambassador, Head of the Mission of Ukraine to the EU, on behalf of UKRAINE and by Mr Gerhard Hütz, Associate Director, on behalf of THE BANK. In case of conflict, the English language shall prevail.

Done this: 14 June 2005, at Luxembourg.

Signed for and on behalf of:

UKRAINE

  
O. B. Rybachuk

EUROPEAN INVESTMENT BANK

  
P. Maystadt