

FRAMEWORK AGREEMENT

between

The Government of Ukraine

and

The Government of the Kingdom of Denmark

concerning

General terms and procedures, institutional arrangements and financial terms for granting of
Danida Business Finance programme to Ukraine

1. Definitions

- a) The expression "Parties" means collectively the Government of the Kingdom of Denmark and the Government of Ukraine and the expression "Party" means either of them.
- b) The expression "MoFA" means the Danish Ministry of Foreign Affairs
- c) ~~DANIDA is the term used for Denmark's Development Cooperation.~~
- d) The expression "Danida Business Finance" means the programme applied by the Kingdom of Denmark as part of the Danish Development Cooperation that provides interest free loans according to the "Guiding Principles for Danida Business Finance" (2016) (annex 1 to this Framework Agreement that is its integral part).

2. General Objectives

The Government of Ukraine and the Government of the Kingdom of Denmark have an extensive cooperation in a number of areas. The Kingdom of Denmark seeks to support the development of a stable and prosperous Ukraine through a range of different engagements, including the promotion and expansion of the commercial ties between the two countries, advocating human rights and democracy and strengthening sustainable and inclusive economic growth.

To further strengthen the co-operation between the Government of Ukraine and the Government of the Kingdom of Denmark, MoFA, has agreed to make funds available under

its Danida Business Finance programme to provide finance for investments in sustainable infrastructure projects in Ukraine, implemented by Danish suppliers.

The overall development objective of the cooperation is to contribute to create sustainable local development in Ukraine in line with national priorities and the United Nations Sustainable Development Goals. The projects will be selected and implemented in full alignment with the Strategy on Sustainable Development (Ukraine-2020).

This Framework Agreement concerns general terms and procedures, institutional arrangements and financial terms for the above-mentioned co-operation. The provision of loans is subject to the annual approval by the Danish Parliament of the budget for Danida Business Finance.

3. Introduction to Danida Business Finance

Danida Business Finance is a facility under the Danish Development Cooperation that provides access to finance in a form of loans and/or financial aid for sustainable infrastructure in developing countries tied to transfer of technology and knowhow through Danish companies. Support may also be granted to development of feasibility studies where Danida Business Finance can cover 75 per cent of the costs. Furthermore, Danida Business Finance can offer technical assistance and support to authority-to-authority cooperation on grant terms related to specific projects, if deemed relevant.

Projects must be in line with the development strategies and sector plans of the recipient country, create sustainable growth and employment and deliver measurable results toward the Sustainable Development Goals. Danida Business Finance offers interest free loans, with 10 years maturity, for investments in primarily public infrastructure in developing countries with GNI per capita less than USD 3,995 (2018) and with a Danish representation.

4. Focus sectors

The cooperation will centre on two focus sectors:

- i. Renewable Energy and Energy efficiency: the support may, *inter alia*, be provided for district heating, wind farms, improvement of the grid and transmission capacity, and projects to improve energy efficiency.
- ii. Water & Wastewater: the support may, *inter alia*, be provided for drinking water supply projects, wastewater treatment plants, Non-Revenue-Water (NRW) technologies.

5. Financial terms

Danida Business Finance may finance projects with an estimated commercial contract value per project up to approximately, but not necessarily limited to, EUR 100 million. Single projects below EUR 13.5 million are not eligible for Danida Business Finance, unless specifically agreed.

Danida Business Finance is provided in accordance with the Organisation for Economic Co-operation and Development (OECD) Arrangement on Guidelines for Officially Supported

Export Credits (the Consensus Agreement). According to the Arrangement, the concessionality level of tied aid for individual transactions must be at least 35 percent.

Loans will be granted with the following terms:

- Loans will be interest free
- Loans will be provided in EUR or USD
- The maturity of the loans is up to 10 years
- Loan amount can cover 100 percent of the commercial contract

The Danida Business Finance subsidy will cover the following:

- Interest in construction period
- Interest in repayment period
- The export premium
- A bank margin
- An upfront grant, in case the above-mentioned expenses do not arrive at 35% of the commercial contract amount.

The detailed information concerning the financial and other terms for Danida Business Finance is provided in "General Conditions for Loan Agreements and the Provision and Administration of Interest Subsidy under the Mixed Credit Programme for Developing Countries" (October 2010) attached as annex 2 to this Framework Agreement that is its integral part.

6. Projects eligible for financing

Danida Business Finance may be provided for financing of sustainable infrastructure projects involving a Danish supplier ("Supplier") and a buyer (the economic entity – a resident of Ukraine or the central executive body, determined by the Government of Ukraine) from Ukraine.

Only projects that are commercially non-viable, that is which lack the capacity to service normal commercial export credit with 10 years maturity, are eligible for Danida Business Finance.

Projects in sectors where Danish companies are internationally competitive based on life cycle costing are prioritized. This means that goods and services should be competitive based on not only the purchase price but on total cost, including operation and maintenance cost (e.g. cost effectiveness of energy and water efficiency).

Danida Business Finance may also offer technical assistance and support to authority-to-authority cooperation, if necessary, to transfer institutional knowledge in the relevant sector area. All commercial contracts financed by Danida Business Finance shall also contain a training package to develop capacity for optimal operation and maintenance of the Danida Business Finance investment.

Projects involving the production of military or paramilitary equipment, alcoholic beverages and tobacco products are not eligible for financing under this Framework Agreement.

7. Project Selection and approval procedures

The Government of Ukraine will determine the procedure for selection of the projects to be financed under this Framework Agreement, but Danida Business Finance reserves the right to propose projects for financing. Projects proposed for financing will be presented by the responsible central executive body of Ukraine as may be determined by the Government of Ukraine (the "Ministry") to Danida Business Finance on an ad hoc basis. On the basis of projects presented and on-going communication between Danida Business Finance and the Ministry, a mutual selection of projects will be made.

Upon positive indication from Danida's Programme Committee in MoFA regarding the eligibility for Danida Business Finance support, the projects will be included in the pipeline of Danida Business Finance. The Ministry will forward feasibility studies on the projects to Danida Business Finance, if available. If needed, Danida Business Finance can assist with the preparation of the feasibility study and cover up to 75 per cent of the related costs. On the basis of the feasibility study and a positive indication from Danida's Programme Committee, Danida Business Finance will initiate appraisal of the project.

Based on a positive appraisal, the project will be presented to Danida's Council for Development Policy, and finally approved by the Minister for Development Cooperation of Denmark. After a commercial contract has been signed, and based on fulfilment of all conditions for support, Danida Business Finance will issue final approval of financing.

8. Borrower/Lender

~~Lender will be a Commercial Bank or a Financial Institution with a representation in the Kingdom of Denmark which entered into relevant agreements with MoFA. Borrower(s) may be either 1) Ukraine represented by the Minister of Finance of Ukraine acting upon instructions of the Cabinet of Ministers of Ukraine ("Ukraine") or 2) the economic entity - a resident of Ukraine who draws a loan under a State guarantee from the Cabinet of Ministers of Ukraine represented by the Minister of Finance of Ukraine (a "Borrower").~~

9. Lending and on-lending

Loan agreements for each project will be negotiated directly between the Ministry of Finance of Ukraine (in case Ukraine is the borrower) or the relevant Borrower and the Lender. The fees and costs of the Lender will be negotiated case-by-case between the Lender and the Ministry of Finance of Ukraine (in case Ukraine is the borrower) or the relevant Borrower. However, maximum rates accepted by Danida Business Finance are 0.375 per cent flat for management fee and 0.25 per cent p.a. for commitment fee.

If on-lending is applied, the Ministry of Finance of Ukraine or the relevant Borrower as the case may be will inform the on-lending margin and possible, other financial costs and

repayment period to Danida Business Finance. The applicable on-lending margin should be kept to a minimum to ensure that the soft element in the loan is used to support the project beneficiary. Thus, on-lending terms must be acceptable to Danida Business Finance.

On-lending will normally be with the same repayment period as the Danida Business Finance loan and normally in the currency in which the project generates income.

10. Procurement Rules and Commercial Contracts

It is a condition for Danida Business Finance support that competitive procurement has taken place, and that the selected offer is competitive with regard to technology, quality and price, not taking the financial terms of Danida Business Finance into consideration.

It is a requirement for Danida Business Finance support that the commercial contract is based on international competitive bidding, or limited international bidding. In cases where at least 2 Danish suppliers exist, the bidding should be limited to Danish suppliers. A pre-qualification is required and should result in a sufficient number of eligible and qualified applicants to ensure that at least two technically acceptable tenders can be obtained. Danida Business Finance will provide technical assistance for tendering, if needed. It is condition for support that Danida Business Finance has no-objection to the tender process and the commercial contract.

The procurement must comply with "Danida Business Finance Rules for Procurement" (March 2017), attached as annex 3 to this Framework Agreement that is its integral part.

Commercial contracts must follow generally acceptable international standards such as FIDIC (Federation Internationale des Ingenieurs-Conseils).

11. Export Credit Guarantee

An export credit guarantee from Danish Export Credit Fund covering at least 95 per cent of the outstanding amounts of each loan granted under this Framework Agreement is required. MoFA will cover the cost of the guarantee premium as part of the Danida Business Finance subsidy.

12. Annual Reviews

The Parties will on an annual basis or whenever deemed necessary by the Parties review progress, agree on a pipeline for projects to be financed under this Framework Agreement, and agree on any other matter arising.

13. Liability

The Kingdom of Denmark shall not be liable to indemnify any third party in respect of any claim, debt, damage or demand arising out of the implementation of this Framework Agreement and which may be made against Danida Business Finance, MoFA or its staff.

14. Taxes and Duties

Customs, duties and taxes to be paid in connection with the implementation of the development projects implemented under this Framework Agreement are considered an integral part of the project and may be charged to the loan, unless otherwise agreed. Interest income of the Lender under this Framework Agreement as a result of issuing loans for Danida Business Finance financing will not be subject to withholding tax in Ukraine.

15. Evaluation and Auditing

The Government of Ukraine will support all necessary documentation for evaluation and auditing of the use of the loans and for study of projects financed within five years after their commissioning. The evaluation will be undertaken by Danida Business Finance, MoFA or by the Danish State Auditors, and may involve visits to project sites.

16. Disputes

Disputes concerning commercial contracts shall be settled under the Rules of Arbitration of the International Chamber of Commerce. Arbitration will be in the English language and the place of arbitration shall be in accordance with the ICC Rules of Arbitration.

Any dispute concerning the interpretation or implementation of this Framework Agreement shall be settled amicably by negotiation between the Parties. In case the dispute has not been settled within a time limit of one year, either Party may refer the matter to arbitration.

The arbitration shall operate according to the following rules: The number of arbitrators shall amount to a total of three, one designated by the either of the Parties, i.e. two, and third designated by the former two. In case of dispute between the former two arbitrators as to the designation of the latter, the latter will be designated by a neutral institution to be identified by the former two. The arbitrary award shall be submitted in written form and must be signed by all three arbitrators. The proceedings to be followed by the arbitral tribunal shall be decided on by the three arbitrators, who shall also determine the distribution between the Parties of costs relating to the arbitration.

17. Fraudulent practices

The Government of the Kingdom of Denmark may terminate the Framework Agreement by sending a written notice through diplomatic channels, or may cancel loans or projects under its execution, if MoFA at its sole discretion determines that, with respect to the Danish funds:

- 1) Corrupt or fraudulent practices were engaged in by the representatives of Ukraine or the relevant Borrower or Lender or of the Buyer or Seller during procurement or during execution of a project; and
- 2) Timely and appropriate action satisfactory to both Parties to remedy the situation has not taken place.

Firms may be barred from contracts financed by Danish funds, either indefinitely or for a specific period of time if either Party determines that the firm is engaged in corrupt or fraudulent practices in competing for or in executing a project financed by Danish funds.

18. Entry into Force, Alterations and Termination.

This Framework Agreement shall enter into force on the date of receiving the last written notification confirming the completion by the Parties of the respective internal legal procedures necessary for the entry into force of this Framework Agreement.

Alterations to the Framework Agreement may be suggested by either Party. Such suggestions shall be submitted to the other Party in writing, in the English language. Alterations shall enter into force in accordance with the respective procedures mentioned in the first paragraph of this Article.

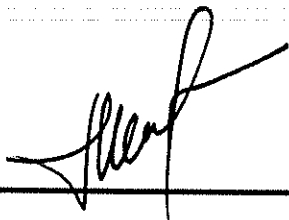
The Framework Agreement shall be valid until the Parties have fulfilled all obligations arising from it. Each Party may terminate this Framework Agreement in whole or in part, by giving a ninety days notice in writing, in the English language.

In witness hereof the Parties hereto, acting through their representatives duly authorised for this purpose, have caused this Framework Agreement to be signed in two originals in the Ukrainian and the English language, both of which are equally authentic. In case of difference in interpretation of the provisions of this Framework Agreement, the English text shall prevail.

Kyiv, on this 14th day of March 2019

For the Government of Ukraine

For the Government of the Kingdom of
Denmark



Oksana Markarova
Minister of finance of Ukraine



Ruben Madsen
Ambassador of Denmark to Ukraine

List of Annexes:

1. Guiding Principles for Danida Business Finance (2016)
2. General Conditions for Loan Agreements and the Provision and Administration of Interest Subsidy under the Mixed Credit Programme for Developing Countries” (October 2010)
3. Danida Business Finance Rules for Procurement (March 2017)