BUSINESSEUROPE

THE EU UKRAINE BUSINESS COUNCIL
creating solid partnerships

Mr Stefan Füle
Commissioner
European Commission
Rue de la Loi 200
B-1049 Brussels
BELGIUM

7 May 2010

Dear Commissioner,

We write to express our concern over two business climate issues in Ukraine, which are making the country less attractive for foreign direct investment. The difficulty relates to proposals by the Ukrainian Cabinet of Ministers surrounding the refund of value added taxes (VAT) to companies exporting from Ukraine, including European investors and the implications of the recently adopted State Budget by the government as far as dividend payments are concerned.

First, the Ukrainian Government owes a significant amount of non-reimbursed VAT to exporters. In light of its financial problems, it is now considering repaying overdue VAT refunds to exporters with Government Domestic Loan Bonds (GDLBs), instead of settling exporter VAT refund claims in cash. Such a development concerns companies exporting from Ukraine as they may lose out in the event of repayment in bonds. One of the concerns is that local companies and exporting companies receive equal treatment on this important issue.

Nonetheless, if the government does move ahead with the bond approach a number of important principles must apply:

- The principle of equal treatment for European-owned companies with Ukrainian-owned companies must be applied by the government as it seeks to resolve this issue.

- Distribution of bonds must take place in full transparency.

- Bond repayments should only apply to outstanding VAT as of 30 April 2010, with cash for current and future transactions.

- GDLBs should be issued by an authorized government authority

- Companies must be able to choose whether to accept GDLBs or exercise their right to be repaid in cash.

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- The face value of the GDLBs must be exactly equivalent to the value of the VAT owed.

- GDLBs must be freely tradable on secondary markets and be of a nature to ensure a market value as close to the nominal value as possible.

- All relevant VAT that has not been reimbursed under the law must be covered.

We draw your attention to the recent positions on this issue outlined by representatives of European[1] and US investors[2] in Ukraine which elaborate in more detail on these issues.

Second, the recently adopted State Budget includes a new obligation for joint stock companies to issue dividends equal to at least 30% of its net profit or its accumulated retained earnings of previous years. This is a new requirement which is aimed to trigger advance Corporate Income Tax (CIT) that applies to dividend distributions. This provision goes against accepted international principles of corporate law and governance as it precludes shareholders from taking decisions on what is a core area of company policy.

BUSINESSEUROPE and the EU-Ukraine Business Council urge you to address these issues with relevant authorities from the Government of Ukraine without delay. We strongly support the EU's efforts to stabilize the situation, especially to address the country's pressing financial problems.

We are at your disposal should you require further information or assistance.

Yours sincerely,

Philippe de Buck
Director General
BUSINESSEUROPE

James Wilson
Director General
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[1] Letter of 9 April 2010 to Prime Minister Azarov from Ms. Anna Derevyanko, Executive Director, European Business Association.

[2] Position Paper of the American Chamber of Commerce in Ukraine and the U.S.-Ukraine Business Council Regarding the Reimbursement of VAT, Friday 23 April 2010.