

RESEARCH STUDY



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DIALOGUE OF THE STATE AND BUSINESS: IN SEARCH FOR EQUILIBRIUM

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A Liberal Club research study

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Summary

According to the core policy documents, the promotion of dialogue between business and the state is amongst the priority dimensions of state policy in this area. At the legislative level, a number of fundamental mechanisms for the engagement between business and the state in Belarus have been provided: public advisory councils, the institute of appeals, operation of business unions and associations, etc. Nevertheless, the findings of the research study show that the public-private partnership situation fails to facilitate the development of interaction and foster adequate bilateral dialogue between business and the state. In our opinion, the following arrangements are called for with a view to developing and enhancing the effectiveness of this dialogue:

1. To ensure the equality of positions of citizens and business entities in the course of the implementation of the provisions of the Law “On appeals of citizens and legal entities” by state bodies.

2. To implement the Regulatory Impact Assessment mechanism.
3. To create an electronic catalogue of administrative procedures comprising information about the procedure itself, implementer, its functionality, implementation period, and possible outcomes.
4. To promote the professionalization of dialogue between the state and business.

Introduction

The content of policy and industry documents, alongside the rhetoric of representatives of public administration agencies, shows that the promotion of the business climate in Belarus is one of the priority issues on the economic agenda. Since January 2017, a working group established under the Presidential Administration has developed seven documents designed to significantly improve the environment for doing business in Belarus.

Such intentions are not new for Belarus. There is an example of Directive of the President of the Republic of Belarus No. 4 dated December 31, 2010 “On the promotion of entrepreneurial initiative and encouragement of business activity in the Republic of Belarus.” Furthermore, the program of socioeconomic development of the Republic of Belarus for 2016-2020 envisages the task to empower business initiative, simplify administrative procedures, and liberalize control and supervisory activities. Similar criteria are contained in the National Strategy for the Sustainable Development of the Republic of Belarus to 2020.

However, if such intentions sounded more like declarations in the listed documents (due to the very nature of those documents), this time it is all about acts envisioning direct effect, which significantly increases the likelihood of the implementation of the innovations designed by the working group.

At the same time, in addition to the implementation of the working group’s proposals, their efficiency becomes a key priority: are the measures proposed really capable of improving the situation, or do they form just another package of top-down rules that have nothing to do with the real-life situation? In our opinion, this issue is relevant not only for the package of documents under discussion, but also in general for the state policy on entrepreneurship.

It is through the prism of this issue that the matter of the availability and functionality of tools for engagement between business and the state becomes increasingly relevant: does business have legal and effective opportunities to communicate its opinion to the legislator? After all, both the effectiveness and the quality of decisions taken, as well as the level of corruption depend on this factor.

If business appears to be unable to interact with the state using legal methods, informal mechanisms will be used instead. Overall, the lack of instruments for interaction is what makes it impossible to build full-fledged, equal-footed dialogue between business and the state, which reduces the effectiveness of measures aimed at the promotion of the business environment in the country.

Formally, there are several types of instruments ensuring engagement between the state and business in Belarus:

- appeals;
- public advisory councils;
- business unions and associations;
- public hearings on draft laws.

We believe that in order to guarantee the real liberalization of business initiative, it is necessary to understand whether business considers these mechanisms to be effective, and whether they are really used by business entities to interact with government agencies, because it is only through the feedback mechanism that decisions taken will be in line with interests and expectations of business, that is, effective.

That being said, as part of our research we were looking for answers to the following question: *how effective are the existing instruments for interaction between the state and business, and how can they be streamlined?*

Research Methodology

Subject: Tools for interaction between business and the state: appeals, public hearings, business unions and associations.

Object: Process of engagement between business and the state.

Objective: To capture the status of dialogue between business and the state, and to determine the arrangements to improve its effectiveness.

Tasks:

- To conduct analysis of the legislation of the Republic of Belarus regarding the availability of instruments facilitating interaction.
- To conduct expert interviews to obtain professional opinion on the status of dialogue between business and the state, availability and effectiveness of the requisite toolkit for effective interaction between actors.
- To make recommendations.

Hypotheses to be verified in the course of the research study:

1. To date, the promotion of dialogue between business and the state in Belarus is at a low level, which can be attributed, inter alia, to the lack of tools for interaction, as well as the low effectiveness of the existing mechanisms for engagement.
2. The low effectiveness of the existing legal tools for interaction between business and the state also leads to an increase in demand for non-formalized communication channels;
3. The creation and implementation of an institutionalized system for interaction between business and the state (GR) will improve the effectiveness of this engagement, as well as produce a positive impact on the level of corruption, investment climate, PPD (public-private dialogue), access of business to information, development of business unions, and quality of legislation;
4. The implementation of a system of measures aimed at enhancing the effectiveness of the existing mechanisms for interaction will also contribute to the development of dialogue between business and the state.

Research method

The semi-structured expert interview method was selected as the main research method. The application of this qualitative method made it possible to obtain assessments and opinions from specialists and verify the hypotheses put forward above. Within the framework of the interviews, the participants were asked to answer 11 open-ended questions, as well as assess the level of development of dialogue between business and the state on a scale of one to ten.

A total of 15 people were interviewed: representatives of business entities, legislative bodies, business unions and associations, who are related to business regulation issues. When sampling respondents for the expert interviews, special attention was paid to the competence and experience of the interviewees.

The participants were asked questions about the status of dialogue between business and the state, positive and negative aspects of this interaction, availability of legal tools to represent and assert the interests of business and their effectiveness (see Appendix 1 for the list of questions). The opinion of each of the interviewees was handled anonymously. The interpretation of the data obtained was performed by way of assessing the similarity of the interviewees' opinions and determining their generalized assessment.

Engagement between business and the state: the status quo

The main document that identifies the formalized instruments regulating the interaction between the state and business is the Law of the Republic of Belarus dated July 18, 2011 “On appeals by citizens and legal entities.” The document regulates in detail the rules for communication with state authorities and officials.

The regulatory framework contains the following mechanisms ensuring communication between business and state authorities:

- Appeals (individual or collective application, proposal, complaint delivered in writing, electronic form, or verbally);
- Personal meeting;
- Direct and hot telephone lines of government bodies.

The law distinguishes three types of appeals:

1. Application – a petition for assistance in the exercise of rights, freedoms and (or) legal interests of an applicant that is not related to violation thereof, as well as a report on violations of legislative acts, shortcomings in the work of state authorities, other organizations (officials), and individual entrepreneurs.
2. Proposal – a recommendation on the improvement of the operation of organizations, individual entrepreneurs, rationalization of the legal regulation of relations in public and social life, resolution of issues of the economic, political, social and other dimensions of state and society.
3. Complaint – a demand for the restoration of rights, freedoms and (or) legal interests of an applicant that have been violated by actions (failure to act) of organizations, citizens, including individual entrepreneurs.

The regulatory act regulates in detail the period for the consideration and filing of appeals, the procedure for the consideration of appeals, the requirements applied to the execution of appeals, the rights and obligations of an applicant, as well as grounds for the refusal to consider an appeal. In addition to appeals, the law envisages such forms of communication as a personal meeting, as well as “hot line.” The rules for implementing these forms of communication are also regulated in sufficient detail. For example, when it comes to personal meetings, fixed timeframes are established: heads of organizations and authorized officials are obliged to organize personal meetings at least once a month during the established days and hours. It is worthy of note that officials at organizations that organize personal meetings, as well as employees of organizations authorized to record appointments to have personal meetings, are not allowed to turn down applications for personal meetings and cannot fail to record appointments, except for the following cases:

- appeals on issues that are not within the competence of these organizations;
- appeals on undesignated days and hours;
- when an applicant has already been given an exhaustive answer to their questions during a personal visit;
- when correspondence with an applicant on the issues stated in their appeal has been terminated.

In addition to the instruments stipulated by the Law of the Republic of Belarus dated July 18, 2011 “On appeals by citizens and legal entities, the following should be mentioned:

- public advisory councils;
- associations and business unions;
- public hearings on draft laws.

Public Advisory Councils (PACs) are consultative, advisory and / or expert bodies involved in public hearings on draft regulatory legal acts concerning issues that may have a significant impact on conditions for doing business. This way, PACs make it possible to receive or submit, directly or via representatives of business associations, information about conditions for doing business.

Civil legislation also determines the possibility for business entities to establish organizations in the form of associations or unions that are non-profit entities in order to coordinate their entrepreneurial activities, as well as represent and assert common property interests under a respective contract that they execute and deliver. However, the channels of interaction between business unions / associations and state bodies have not yet been determined. Furthermore, such organizations do not have the right to engage in entrepreneurial activities on their own behalf, for example, they are not entitled to provide consultation or organize educational programs. Also, many large unions are associations of employers; however, there is no legislative act regulating the operation of such associations.

The Belarusian legislation also stipulates the procedure for conducting public hearings on draft laws. According to the resolution of a respective rule-making authority (official), a draft legal act can be submitted for public (national, community, or professional) hearing.

Therefore, the analysis of regulatory legal acts makes it possible to verify the availability of an established toolkit facilitating interaction between the state and business. This fact is a significant advantage in the promotion of dialogue between the two actors. However, to what degree is each of the described mechanisms effective, and does business use these tools at all in its practice?

Findings of the expert interviews

Asked about the **level of development of dialogue and engagement between the state and business**, the majority of the interviewed participants spoke about the lack of transparency and partnership relationships between the actors, as well as their unequal statuses. Although some interviewees noted the intensification of engagement between the state and business and the emergence of a new generation of officials who are ready to listen to business, none of the participants in the survey verified the existence of full-fledged dialogue. The main obstacles to its development were the following:

1) *Situational nature of interaction*. In the event of deterioration of the economic and foreign policy environment (specifically, the relationship with Russia), the state shows interest in the development of the business environment, and intensification of dialogue is observed. As soon as the impact of these factors wears down, rollback occurs. As a result, many decisions necessary for business are implemented only partially, and some remain unimplemented. The development of full-fledged dialogue in such conditions is impossible.

2) *Lack of mutual interests*. As the participants in the interviews noted, the state does not try to understand business and its interests, and communication between the actors appears to be vertical. The state is still unable to see benefits it can derive from business development.

3) *Dialogue is replaced with notifications*. The process of interaction proceeds according to the principle: the state establishes rules – and business, if it wants to work, must comply. The feedback mechanism is de facto non-existent.

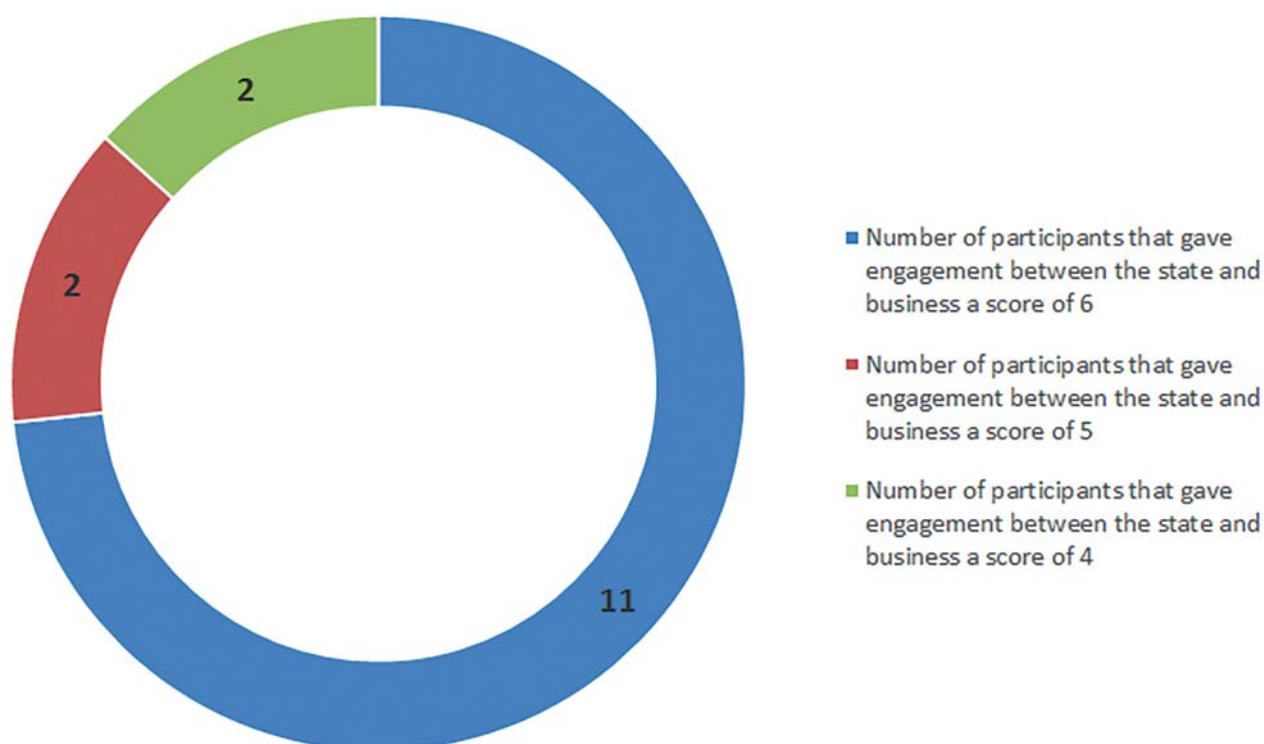
4) *Lack of necessary institutions and low efficiency of the existing tools for dialogue*, which causes business to use non-formalized tools for engagement with government bodies.

5) *Leadership role of business and efficiency of business unions*. The involvement of business in agenda-setting is low, i.e. business itself does not show initiative in submitting proposals, preparing regulatory legal acts, and participating in public advisory councils. The low level of professionalism of business unions and the issues with proper representation of interests of members of business unions were also mentioned.

When **assessing the level of engagement between the state and business on a scale of one to ten, the majority of the participants in the survey gave it six points** (it is also the highest rating), **the average score being 5.6 points**.

When it comes to the **interest of state authorities in the promotion of engagement between the state and business**, the opinions of the interviewees were divided into three groups. Some experts spoke about the imitation of the state's interest, attributing it to the need to demonstrate the efforts of state agencies in this area to international organizations, with which Belarus interacts.

Assessment of the level of engagement between the state and business on a scale of one to ten



Others shared the opinion that there are some positive changes; however, not in general in the system of public administration, but in individual ministries, including the Ministry of Antitrust Regulation and Trade and the Ministry of Economy. Experts also emphasized the dependence of the level of interaction on the human factor: if the head of a structural unit and the ministry as a whole finds it important to foster dialogue, then there will be dialogue, and if not there will be make-believe dialogue. This suggests that in reality there is no uniform state policy. Furthermore, some experts mentioned the state's willingness to develop further dialogue and improve its effectiveness by implementing new tools.

Asked about the **relevance of the development of GR (institutionalized system of engagement between the state and business) in Belarus as a tool for increasing the effectiveness of bilateral contacts**, the overwhelming majority of interviewees said the matter was highly relevant. In their view, the promotion of the GR institute will enable small and medium-sized businesses to be included in the process of the preparation of decisions that have a bearing upon the development of the business environment in Belarus. So far, SMB has been de facto excluded from this process. In addition, a fully operational GR institute will improve communication between business and the state and bring Belarus closer to full-fledged bilateral dialogue.

At the same time, some participants expressed the opposite opinion that the institutionalization of GR would not solve the problems, although it all depended on how and what GR mechanisms were to be implemented. It was also suggested

that in a distorted form, GR was already developing in the banking sector in the format of “security offices.” However, the existence of such offices is due not so much to business’s own initiative, as to the need to employ retired security officials. As a result, this sphere is glutted, on the one hand, while on the other hand, it lacks specialists who could deal specifically with interests of the state and business.

Asked **how the development of instruments for interaction between the state and business (GR) would affect** the level of corruption, the investment climate, PPD (public-private dialogue), access of business to information, the development of business unions, and the quality of legislative activity, virtually all of the interviewees expressed positive expectations.

The majority of them, **when referring** (in an open question) **to the legal mechanisms of interaction between the state and business**, pointed to public advisory councils. Some of the participants additionally named the instruments envisaged by the Law “On appeals by citizens and legal entities” (appeal: application, proposal, and complaint), as well as organization of joint events. At the same time, many noted that in everyday practice, those tools were only a supplement to non-formalized contacts and connections. On their own, appeals are a good way to designate / represent their interests before state structures, but they do not guarantee the effective promotion of proposals for improving the applicable legislation. Some experts also noted the involvement in industry associations as a mechanism for interaction, along with Regulatory Impact Assessment (which might be implemented in the future). As for the **effectiveness of these channels**, almost everyone agreed that without the application of non-formalized communication and tools it remains low. Before submitting an official request, non-formalized calls and contacts are frequently employed, because otherwise there is a risk that no effective feedback will be received.

When it comes to the operation of public advisory councils, the personal factor is of great importance, i.e. who heads the PAC and to which ministry they are attached: both positive and negative experience of participation were mentioned. A PAC is an instrument of limited participation, because not all business representatives can be involved in meetings.

In addition, the PAC mechanism is perceived by the majority of the interviewees as a tool for communicating opinions of businesses; however, there is no certainty that these opinions are properly taken into account. As for public hearings on draft regulatory and legal acts, the current practice (duration, lack of awareness of a public hearing being held, etc.) de facto narrow opportunities for the participation of business. This is especially true for SMB that do not have specialized offices (services) focusing on the preparation of proposals. There are virtually no real opportunities for business to participate in the lawmaking process and influence it.

As regards the **sufficiency of legal regulation of the domain in question**, opinions were divided into two practically equal groups. The former spoke about the priority need to create a framework to fully use the existing tools: PACs, appeals, etc. In other words, *“it is necessary that the existing mechanisms work before new ones are established.”* The latter group expressed the opinion about the need to expand the legal toolkit. Half of the interviewees mentioned the **need for the preparation and implementation of a legislative act regulating GR-activities in Belarus**. A quarter agreed with this need, but in the long run (as engagement progresses), another quarter insisted that there was no such need.

Conclusions and recommendations

It would be safe to say that the system of basic tools for interaction between business and the state in Belarus has been established. These include public advisory councils, the institute of appeals, the operation of business unions and associations, etc. Nevertheless, the findings of the research study show that the situation in the sphere of public-private partnership fails to effectively facilitate the development of engagement and establishment of full-fledged bilateral dialogue between business and the state for the following reasons:

1. These tools are relatively efficient only as a supplement to non-formalized tools: calls, meetings, events, etc. Even PACs, which were referred to by the interviewees as the most effective tool, are mostly used to establish contacts and exchange information about the upcoming novelties.
2. The existing tools do not constitute a feedback mechanism. Business can only convey its position (and not always successfully) on some issues, but without being sure that this position will be included in the agenda.
3. Given the previous two paragraphs, as well as modest opportunities to use non-formalized tools and the weakness of business unions, representatives of SMB are de facto significantly limited in their engagement with the state and representation of their interests.
4. There is a high level of dependence of the effectiveness of engagement between business entities and government agencies on the personal factor, which attests to the absence of a uniform state policy on this issue.
5. The low business activity in the use of tools of interaction is probably due to low efficiency of PACs, appeals, public hearings, etc.

Taking in consideration the above, the following can be outlined as the basic ways to **enhance the efficiency of engagement between business and the state**:

1. **Implementation of the Regulatory Impact Assessment (RIA) mechanism** (in its broadest version) in the process of drafting regulatory and legal acts. A draft law has been prepared in Belarus, several RIA versions have been developed, but experts are concerned that the idea “*may be soft-pedaled*” or implemented in its abridged version, which will significantly reduce the effectiveness of its implementation.
2. **Development of industry business unions and associations.** Business associations need to improve their efficiency, including through guidance procedures to shift the focus from general to private issues.
3. **Gradual legalization of the GR-segment and its professionalization.** The activity of business unions, associations and GR specialists focusing on engagement with government bodies is not regulated in detail, and the functionality of these entities (within the framework of interaction) is not codified, either. This situation leads to the use of non-formalized tools.
4. **Timely notifications about expected changes in the regulatory framework.** In Belarusian practice, there is a problem with preliminary familiarization with drafts of legislative amendments. Some of the proposed changes are handed over from the top without any coordination and approvals, which affects the operation of business entities and their perception of the level of interaction.
5. **Creation of a system for routing engagement between business and administration,** that is, an information system that allows business to correctly identify the recipient of interaction and understand its functionality.

Therefore, in our opinion, the following arrangements are required in order to foster the development of engagement between the state and business:

1) To ensure the equality of positions of citizens and business entities in the course of the implementation of the Law “On appeals by citizens and legal entities” by state bodies.

Currently, we can acknowledge the lack of balance in state agencies with regard to the issues of handling appeals. For example, one of the main regulatory legal acts aimed to cut red tape in the machinery of government (Directive No. 2 dated December 27, 2006 “*On de-bureaucratization of the machinery of government and improvement in the quality of public life support*”) is primarily aimed at working with citizens, rather than legal entities. It follows from the preamble¹:

- “*The most important tasks of the Belarusian state are to protect the rights and legitimate interests of citizens, ensure a framework for a free and dignified development of an individual, improve people’s living standards. The successful fulfillment of these tasks in large part depends on how effectively the system of work with the population operates.*”

¹ http://president.gov.by/ru/official_documents_ru/view/direktiva-2-ot-27-dekabrja-2006-g-1398/

- *“We should move on to a new, higher level of interaction between the state and the people, based on the current level of promotion of information technologies and maximizing the use of possibilities available in the field of informatization.”*

This imbalance is observed in other sources as well. For example, the section “Appeals by citizens and legal entities” on the official website of the President of the Republic of Belarus only contains information on the importance of the work with citizens: *“The work with citizens’ appeals is one of the most important tasks of the Belarusian state with a view to protecting the rights and legitimate interests of citizens, ensuring a framework for free development of an individual and improving living standards of people on the basis of the implementation of constitutional requirements concerning the mutual responsibility of the state to citizens and of citizens to the state.”*²

The Board of the Presidential Administration of Belarus held a meeting on April 5, 2017 to address the issue of appeals by citizens and legal entities, which focused mostly on the work with appeals filed by citizens, rather than legal entities.³

Given the current decision-implementing practice and the high level of dependence of implementers on the rhetoric and opinions expressed by high-ranking officials and the president, this situation leads to a lop-sided perception of the work with appeals. As a result, employees of the administration mostly associate their work with appeals with citizens, although citizens and legal entities are equal subjects of the above-mentioned law. As a result, negative phenomena emerge, and they are revealed during interviews: the low efficiency of appeals and high dependence of engagement between business and the state on the human factor.

2) To implement the Regulatory Impact Assessment mechanism. A respective decision has been made; however, it is still unclear how and to what extent it will be implemented. Originally it had been planned to develop an individual act with detailed regulations for the Regulatory Impact Assessment operation procedure, but at the moment it is all about making amendments to the Law “On Regulatory Legal Acts.” It is highly questionable, though, whether this procedure will be detailed enough. Furthermore, it is still unknown who can be involved in Regulatory Impact Assessment and how, and how proposals submitted will be adopted, considered, and implemented. Therefore, there is the risk that Regulatory Impact Assessment will become another tool for communicating information from business to state agencies, but nothing else. To avoid such a situation, detailed legislative regulation is required to identify how this mechanism will operate:

- To clearly specify which draft regulatory legal acts are supposed to undergo the procedure.

² <http://president.gov.by/ru/obrascheniya/>

³ <http://www.belta.by/society/view/administratsija-prezidenta-natselivaet-mestnye-vlasti-na-novye-podhody-v-rabote-s-obraschenijami-241195-2017/>

- To codify in detail the process of adopting, recording, and implementing proposals. To regulate the terms of consideration, the need for their extension, the grounds for their acceptance / rejection.
- To make the process transparent: publish the names of all employees of state agencies and experts involved in the procedure, as well as the decision taken in the course of Regulatory Impact Assessment, justification for acceptance / refusal to accept proposals.
- To minimize the possibility of turning down the procedure. State authorities often haphazardly include certain projects in the “For official use” category. The existing resolution, which describes the areas subject to the “classified” status does not provide for a ban on the abuse of this right, which significantly reduces the possibility of obtaining information.

3) To create an electronic catalogue of administrative procedures that contains information about the procedure itself, the implementer, its functionality, implementation timeframe, and possible outcomes. Such a system would improve the routing system in the relationship between business and the state, and would also increase the awareness of the work process of state agencies. The task to create such a system was included in Presidential Directive No. 2 dated 27 December 2006 *“On de-bureaucratization of the machinery of government and improvement in the quality of public life support”* with the respective deadline on 1 January 2017, but the work conducted by the Department for Entrepreneurship of the Ministry of Economy is not finished yet.

4) To promote the professionalization of dialogue between the state and business. First, to develop the institute of professional consultants with respect to issues of engagement between business and the state, representing interests of both commercial companies and government agencies. Second, to expand the legislative regulation of business associations on financial (self) support (for example, allow conducting certain types of business activities, such as consulting). Currently, civil law comprises only three articles that define the union / the association, describe their constituent document, and their basic rights and responsibilities.

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