

**MEMORANDUM OF UNDERSTANDING**

**BETWEEN**

**THE GOVERNMENT OF AUSTRALIA, THE GOVERNMENT OF THE KINGDOM OF  
BELGIUM, THE GOVERNMENT OF MALAYSIA, THE GOVERNMENT OF THE  
NETHERLANDS AND THE GOVERNMENT OF UKRAINE**

**REGARDING**

**FINANCIAL SUPPORT FOR PROSECUTING THE PERPETRATORS OF THE  
DOWNING OF FLIGHT MH17 ON 17 JULY 2014**

Australia, Belgium, Malaysia, the Netherlands and Ukraine,

*Deploring* the downing of Malaysia Airlines flight MH17 on 17 July 2014 in Donetsk Oblast, Ukraine, which resulted in the tragic loss of 298 lives, including 80 children;

*Recalling* that UN Security Council resolution 2166 (2014), adopted by the Security Council at its 7721st meeting, on 21 July 2014, demands that those responsible for the downing of flight MH17 on 17 July 2014 be held to account and that all States cooperate fully with efforts to establish accountability;

*Recalling* that the competent authorities of Australia, Belgium, Malaysia, the Netherlands and Ukraine have established a Joint Investigation Team (JIT) to coordinate the criminal investigation, with the aim of bringing the perpetrators to justice;

*Noting* that the Government of Australia, the Government of Belgium, the Government of Malaysia, the Government of the Netherlands and the Government of Ukraine (“the Signatories”) have jointly recognized, after careful consideration of the available options, that prosecuting the perpetrators of the downing of flight MH17 in the Netherlands would be the most viable prosecution mechanism;

*Noting* further that the Signatories have concluded a Memorandum of Understanding on 20 September 2017 regarding political support for prosecuting the perpetrators of the downing of flight MH17 on 17 July 2014;

Have come to the following understanding:

## **Paragraph 1**

### **Scope**

The Signatories arrange to jointly finance the proceedings connected with the prosecution in the Netherlands of those suspected of downing flight MH17 in light of the international nature of the tragedy and the goal of capturing the harm done to all victims and making the legal proceedings as accessible as possible to all next of kin of the victims.

## **Paragraph 2**

### **Establishment of a Financial Oversight Committee**

1. The Signatories hereby establish a Financial Oversight Committee.
2. The Financial Oversight Committee will be composed of representatives of the Government of Australia, the Government of Belgium, the Government of Malaysia, the Government of the Netherlands and the Government of Ukraine, and may also include representatives of the Government of those *grieving nations* – those countries which lost one or more nationals aboard flight MH17 – that have financially contributed to the prosecution.

## **Paragraph 3**

### **Financial Arrangements**

1. The Signatories may invite other grieving nations to become a contributor and join the Financial Oversight Committee.
2. The expenditures for the public prosecutors, the judiciary and witness protection will be solely borne by the Netherlands and will not be subject to any oversight by the Financial Oversight Committee.
3. The nature, extent and modalities of the contributions to the funding will be determined in bilateral arrangements to be concluded between the Netherlands and each contributing country.

#### **Paragraph 4**

##### **Functions of the Financial Oversight Committee**

1. The Financial Oversight Committee will, inter alia:
  - (a) Receive and consider yearly progress reports of the Ministry of Justice and Security of the Netherlands and provide direction and advice on all non-judicial aspects of its operations;
  - (b) Receive and consider financial reports produced by the Ministry of Justice and Security. These reports will include a full breakdown of the initially approved detailed budget lines and corresponding expenses. The narrative reports will show the link between the undertaken activities and the expenses;
  - (c) Review and approve the annual budget for those cost categories which will be financed jointly by the Governments of the Financial Oversight Committee; and
  - (d) Assist through outreach to other grieving nations to help ensure that adequate funding is available for the operation of the proceedings connected with the prosecution of those suspected of the downing of flight MH17.
2. The Rules of Procedure for the Financial Oversight Committee is annexed hereto and will form an integral part of this Memorandum.

#### **Paragraph 5**

##### **Amendments**

1. This Memorandum may be amended at any time by consent of the Signatories in writing.
2. Any amendment of this Memorandum becomes effective on the date specified in the amendment.

## **Paragraph 6**

### **Effective date and Duration**

1. This Memorandum will become effective on the date of signature by the Signatories.
2. This Memorandum will take effect for any other Government, invited to do so by the Signatories, on the date of informing the other Signatories in writing of its wish to become a Signatory.
3. This Memorandum will remain in effect for five years and will be extended for successive two years periods, as deemed necessary by the Signatories. Where one of the Signatories notifies the other Signatories in writing that it no longer wishes to be a Signatory to this Memorandum, the Memorandum will cease to have effect in respect of the notifying Signatory. The Memorandum will remain in effect for the remaining Signatories.

Signed in quintuple at The Hague on this 22<sup>nd</sup> day of January 2018 in the English language.

***For the Government of Australia,***



M.E.K. NEUHAUS

Ambassador to the Kingdom of the Netherlands

***For the Government of the Kingdom of Belgium,***



D.L.M.F. ACHTEN

Ambassador to the Kingdom of the Netherlands

***For the Government of Malaysia,***



AHMAD NAZRI BIN YUSOF

Ambassador to the Kingdom of the Netherlands

***For the Government of the Netherlands,***



S.A. BLOK

Minister of Foreign Affairs

***For the Government of Ukraine,***



V. CHENTSOV

Ambassador to the Kingdom of the Netherlands

## **Rules of Procedure for the Financial Oversight Committee MH17**

### **I. Composition of the Financial Oversight Committee**

1. The Financial Oversight Committee will comprise representatives of the Government of Australia, the Government of Belgium, the Government of Malaysia, the Government of the Netherlands, the Government of Ukraine and of the Government of those *grieving nations* that have financially contributed to the prosecution.
2. Membership in the Financial Oversight Committee will be limited to those governments whose authorities cooperate in the Joint Investigation Team or who represent a *grieving nation*.
3. Should any Member State of the Financial Oversight Committee withdraw from the Committee for any reason, a replacement will be sought among those *grieving nations* that have financially contributed to the prosecution.
4. Replacements or additional members of the Financial Oversight Committee will be appointed by a decision of the Financial Oversight Committee.

### **II. Decision Making of the Financial Oversight Committee**

1. Decisions of the Financial Oversight Committee will be taken, to every extent possible, on the basis of consensus among all Member States.
2. If the Chairperson concludes that (s)he sees no perspective to reach a decision on the basis of consensus among all Member States, (s)he can make a procedural proposal to make the decision by an affirmative vote by simple majority of the Member States of the Financial Oversight Committee. If no Member State objects to such a procedural proposal, the decision will be made by affirmative vote in the presence of all Member States. If one or more Member States object to the procedural proposal, consultations to reach consensus will continue.

### **III. Functions of the Financial Oversight Committee**

The functions of the Financial Oversight Committee are laid down in paragraph 4 of the Memorandum of Understanding between the Government of Australia, the Government of the Kingdom of Belgium, the Government of Malaysia, the Government of the Netherlands and the Government of Ukraine regarding financial support for prosecuting the perpetrators of the downing of flight MH17 on 17 July 2014.

### **IV. Selection of Chairperson, Vice-Chairperson**

The Financial Oversight Committee will select a Chairperson and a Vice-Chairperson among the representatives of Member Governments. The Chairperson and Vice-Chairperson will be selected for a period of two years.

## **V. Liaison Officer**

A liaison officer appointed by the Ministry of Justice and Security of the Netherlands will assist in the work of the Financial Oversight Committee.

1. The liaison officer will convene meetings and ensure that the Financial Oversight Committee will receive reports specified in paragraph 4 of the Memorandum.
2. In addition, the liaison officer will assist the individual members with any queries relating to the financial aspects of the prosecution.

## **VI. Meeting of the Financial Oversight Committee**

The Financial Oversight Committee will meet in principle twice a year in The Hague. Member States of the Financial Oversight Committee in The Hague will cooperate and be closely associated with the work of the Committee.

## **VII. Secretariat Services**

The Ministry of Justice and Security of the Netherlands will provide the Financial Oversight Committee with secretariat services.

## **VIII. Amendments**

1. The Financial Oversight Committee will have the authority to further develop their working procedures by consensus.
2. Thereafter, the Financial Oversight Committee will also be able to amend the Rules of Procedure by consensus as it sees fit.



## Annex

### **Member States:**

Australia

Belgium

Malaysia

The Netherlands

Ukraine