On December 19, 2019, the Verkhovna Rada of Ukraine adopted the Law amending certain legislative acts of Ukraine regarding regulation of amber production operations (registration No. 2240 of October 8, 2019).

In particular, the new law establishes:

- a mechanism of reserving land plots for subsoil use operations before the auction;
- a single 5-year permit for geological exploration of amber deposits, including experimental development of deposits with the subsequent production of amber (commercial development of amber deposits), for land plots of up to 10 hectares;
- the initial auction sale price of a special permit for amber at 2000 times the amount of non-taxable minimum individual income (34,000 UAH) per hectare;
- criminal liability for illegal production of amber and for sale, purchase, storage, transfer, shipment, transportation or processing of amber, for which no appropriate documents confirming legality of its origin are available (a fine of 51,000-170,000 UAH or 2-3 years of prison sentence; for offenses committed repeatedly or upon prior collusion: 3-5 years of prison sentence; for offenses causing serious consequences: 5-7 years of prison sentence).

At the same time, the law has introduced a number of changes for the entire extractive sector, in particular exploration and production of hydrocarbons.

- amendments to the Subsoil Code lifting the required approval by regional councils of subsoil use permits for geological exploration and development of the mineral resources of national significance and for the purposes not related to resources development;
- the approval of subsoil use permits for geological exploration and development of the mineral resources of local significance remains the responsibility of village, city and district councils, but their list has been supplemented by the councils of amalgamated territorial communities;
- amendments to the Law “On Production Sharing Agreements” lifting the requirements for draft PSAs to be approved by local self-government authorities (with the target field located on their territory), and for conducting environmental impact assessment for draft PSAs.

DiXi Group think tank welcomes the real steps taken to legalize the development of amber and to take this industry out of shadow market, in particular through new legislative provisions.
At the same time, general amendments may pose certain risks:

- the removal of local self-government authorities from participation in the process of assigning subsoil fields for development (mineral resources of national significance) and in the conclusion of production sharing agreements reduces public control over the use of natural resources

Despite the negative practice of certain regional councils, which were manipulating to secure socio-economic development agreements concluded, public control must be preserved. According to the Constitution of Ukraine, subsoil is the property of Ukrainian people and, therefore, the matter of subsoil use must be decided on jointly by territorial communities where extraction operations take place.

Instead of completely lifting the mechanism of approving locally the special permits for subsoil use, we advise to transfer these functions from regional councils directly to territorial communities, i.e. village, city councils, and councils of amalgamated territorial communities. A mechanism of consultations with local communities in accordance with the best practices of Open Contracting can be designed in various formats, but the key is to obtain a “free, prior and informed consent” to the planned activity.

- lifting of the environmental impact assessment (EIA) procedure when concluding PSAs may expose Ukraine to sanctions for violation of its international obligations concerning EIA

These obligations are stipulated in the Ukraine-EU Association Agreement (in particular, Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment), the Treaty establishing Energy Community, and international conventions on environment.

Inter alia, the Secretariat of the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) still did not close proceedings in the case against Ukraine No. ACCC/C/2014/118 concerning the conclusion of PSAs for Yuzivska and Oleska fields in 2013. Among the violations claimed by the communicant, Environment-People-Law NGO, is performance of an environmental expertize (back then, “analogue” of EIA) after the PSA for Yuzivska field was signed and the failure to facilitate participation of the public in environmental impact assessment for both projects.

DiXi Group think tank calls for additional consultations with stakeholders, e.g. in the format of the Multi-Stakeholder Group for implementation of the Extractive Industries Transparency Initiative (EITI), in order to prevent violation of Ukraine’s obligations and develop acceptable and business-friendly mechanisms of engaging local communities in the processes of approving planned activities and performing EIAs.

Presently, DiXi Group experts are working on a separate study concerning EIA in extractive industries, which will be presented in early 2020, and propose holding a public discussion of recommendations related to this issue.