



Disclosure of Information on Extractive Contracts:

Case of Production Sharing Agreements (PSAs)

This publication was developed under the USAID Energy Sector Transparency project implemented by DiXi Group. This study is made possible by the support of the American people through the United States Agency for International Development (USAID). The contents are the sole responsibility of the DiXi Group and do not necessarily reflect the views of USAID or the United States Government.

© DiXi Group NGO, 2021.

Introduction

In December 2018, by Resolutions No. 1178-1189, the Cabinet of Ministers of Ukraine announced a tender for geological exploration and production of hydrocarbons within 12 fields under the terms and conditions of production sharing agreements (PSAs)¹. At the end of 2020, the Ministry of Energy signed 7 PSAs² which provided for the development of the following fields: Balakliiska, Berestianska, Buzivska, Ivankivska, Sofiivska, Uhnivska and Zinkivska (Appendix 1). Another PSA (for the Varvynska field) was signed by the Ministry of Energy on 14 January 2021³.

In accordance with the requirements of the Law of Ukraine “On Ensuring Transparency in the Extractive Industries” No. 2545-VIII as applicable since 13 February 2020⁴ :

- economic entities operating in the extractive industries shall provide the Ministry of Energy of Ukraine with information on the essential terms and conditions of subsoil use agreements together with the relevant extracts from such agreements (Article 5);
- *in turn, the Ministry of Energy shall make public on its official website information on the essential terms and conditions of subsoil use agreements of all economic entities operating in the extractive industries with the recipients of payments together with the relevant extracts from such agreements as well as a list of all such agreements indicating their details (name and number, parties, date of conclusion) [Article 11].*

The Extractive Industries Transparency Initiative (EITI) Standard, as amended in 2019⁵, provides for the full disclosure and making public of extractive contracts since 2021 [publication of the full text of contracts (agreements) with annexes*] entered into by the government (requirement 2.4.). This has become a practice for the world’s leading companies in the extractive sector. In Ukraine, the process of PSA disclosure (albeit partial) is taking place for the first time. So, it needs a detailed analysis in order to further improve (both in terms of the volume of information disclosure and in terms of adjusting the content of future PSAs).

**according to the EITI Standard 2019, 2.4(d), the term contract means:*

- i. The full text of any contract, concession, production-sharing agreement or other agreement granted by, or entered into by, the government which provides the terms attached to the exploitation of oil gas and mineral resources.*
- ii. The full text of any annex, addendum or rider which establishes details relevant to the exploitation rights described in 2.4(d)(i) or the execution thereof.*
- iii. The full text of any alteration or amendment to the documents described in 2.4(d)(i) and 2.4(d)(ii).*

¹ [Regarding the work of the Interdepartmental Commission on the Organization of Conclusion and Implementation of Production Sharing Agreements // Ministry of Energy of Ukraine: \[official web portal\]. – Requested on: 3 June 2021.](#)

² [Production sharing agreements in seven oil and gas fields have been signed // Ministry of Energy of Ukraine: \[official web portal\]. – Requested on: 3 June 2021](#)

³ [Foreign investments in hydrocarbon production contribute to the achievement of energy independence // Ministry of Energy of Ukraine: \[official web portal\]. – Requested on: 3 June 2021](#)

⁴ [Law of Ukraine “On Ensuring Transparency in the Extractive Industries” No. 2545-VIII as applicable since 13 February 2020](#)

⁵ [EITI Standard 2019](#)

Does the disclosed information meet the requirements of transparency legislation?

In accordance with subparagraph 3 of Article 11 of the Law of Ukraine “On Ensuring Transparency in the Extractive Industries” (hereinafter referred to as the “Law”), information about the essential terms and conditions of subsoil use agreements shall contain:

- 1) name of the agreement, its number, date of conclusion and names of the parties;
- 2) date of entry into force and validity period of the agreement;
- 3) subject of the agreement;
- 4) rights and obligations of the parties regarding the use of subsoil, other rights to natural resources;
- 5) guarantees for the stability of legislation (if any);
- 6) terms of payment peculiarities;
- 7) operational obligations, including work programs;
- 8) environmental protection obligations;
- 9) requirements for the safety and labour protection of employees and contractors and their employees involved;
- 10) social obligations, including regulations on participation in the development of local infrastructure and regulations on the use of works, goods and services performed, supplied or provided by economic entities registered within the territorial community where activities are conducted in the extractive industries, requirements for holding public hearings.

We will further consider in more detail the content of each of these items in the published materials on the PSAs for the completeness of the disclosure of these issues and fulfillment of the requirements of the Law.

Deadlines of making public essential terms and conditions of PSAs

The first non-compliance with the requirements of the Law is a violation of publication deadlines. Article 12 of the Law sets a deadline of one month for economic entities to submit information on the essential terms and conditions of subsoil use agreements together with the relevant extracts from such agreements and another month is provided to make them public (i.e. a maximum of 2 months). 7 PSAs were signed on 31 December 2020, and another one – on 14 January 2021, but partial information about their essential terms and conditions was published only on 19 May 2021⁶; the essential terms and conditions of the PSA for the Varvynska field have not been published as of 10 June 2021.

⁶ [Production sharing agreements / Official website of the Ministry of Energy of Ukraine](#)

Agreement number

The second formal non-compliance with the law is the **lack of a PSA number** in the published materials. A PSA number is indicated only in the extract on the Sofiivska field (investor – Geo Alliance Partnership LLC and Geo Alliance Partnership B.V.). In the documents of Ukrgasvydobuvannya JSC for such fields as Balakliiska, Berestianska, Buzivska, Ivanivska, the name of the PSA is marked “n/a” (number not available), although the numbers of the relevant PSAs are indicated in the texts of special permits for subsoil use (see Annex 1) provided for the development of these fields.

Conditions for the peculiarities of making payments

The information made public on the terms and conditions of the PSA with the participation of **Ukrgasvydobuvannya JSC for four fields (Balakliiska, Berestianska, Buzivska and Ivanivska)** is identical, except for the difference in the established share of compensation costs (in the Balakliiska field, the investor is entitled to reimbursement of all costs it incurred according to the agreement, at the expense of 65% of the extracted hydrocarbons, for the Berestianska and Ivanivska fields, this percentage is also 65%, and for Buzivska – 68%). Therefore, all further comments and remarks on the PSA with the participation of Ukrgasvydobuvannya JSC equally apply to four fields.

In the excerpts from the PSA, where Ukrgasvydobuvannya JSC is the investor, the features of making payments are disclosed very limited. Taxes paid (national taxes and fees, local taxes, national contributions, except for the value added tax and personal income tax) and payroll taxes are listed. In general, it is about payment of excise tax: “to the extent that the excise tax is payable under the Agreement, it shall be subject to the rules provided for the taxes payable”. Furthermore, it is unclear what additional conditions for the payment of excise tax are provided for in the PSA; these data are not disclosed in the extracts.

It is also mentioned that the investor (Ukrgasvydobuvannya JSC) must pay profit tax and royalties provided by the Tax Code of Ukraine. It is stated that for the purposes of calculating profit tax and royalties for subsoil use in accordance with the PSA, the value of all extracted hydrocarbons is calculated and determined in the manner prescribed by the agreement. However, the procedure for determining the value of extracted minerals is also not presented in the published materials. With regard to the payment of bonuses, it is noted that such payments are not envisaged by the agreements.

And no less important is the fact that the published terms and conditions PSAs with the participation of Ukrgasvydobuvannya JSC do not disclose basic information about the distribution of profit hydrocarbon products between the government and the investor, in particular, what percentage of profit products belongs to the government, and how much – to the investor, how this ratio changes at different stages of field development (at the stages of buildup, plateau, decline in production and depletion of reserves), or how the distribution of interest between the government and the investor changes depending on the R-factor*; how the R-factor is calculated.

**R-factor is the indicator defined as the ratio of investor’s revenue (amount of cost products and the investor’s profit share) to expenses in the current period⁷*

⁷ [Production-Sharing Agreements: An Economic Analysis / K. Bindemann // Oxford Institute for Energy Studies, 1999. – P. 18](#)

The extract of the PSA on the Zinkivska field (investor – Oil and Gas Overseas Trading BV and Oil and Gas Exploitation LLC) also describes the list of taxes payable. In addition, it specifies that during 90 days upon entry into force of the agreement, investors pay a one-time premium to the government for signing (entering into) this agreement, and after the first commercial opening under this agreement – pay a one-time premium to the government for the first commercial opening, but the amount of these payments is not included in the text of the extract. More detailed information on the procedure for determining the value of extracted minerals and the procedure for the distribution of profit products between the government and the investor has not been made public.

In essential terms and conditions of the PSA on the Uhnivska field (investor – WELL KO LLC) regarding the peculiarities of making payments, the following is indicated: “If the term of payment is not stipulated by this Agreement or otherwise agreed by the Parties, payment shall be made within 30 days from the day following the day of receipt of the written request for payment from the Party entitled to receive such payment under this Agreement”. No further information is provided on this issue. An extract from the PSA on this field has not been published.

Against the background of other PSAs, the materials published on the **Sofiivska field (investor – Geo Alliance Partnership LLC and Geo Alliance Partnership B.V.)** differ in the completeness of the information disclosed. The extract from the PSA fully covers the procedure for making payments, indicating the amounts, interest, nuances and conditions. In particular, the following information is presented:

- the investor will pay the government a bonus of USD 5 million or its equivalent in UAH after the average daily volume of natural gas produced by the operator for the first time exceeds 1 million cubic meters in one calendar quarter;
- the investor will pay the government a bonus of USD 10 million or its equivalent in UAH after the total volume of natural gas produced by the operator for the first time exceeds 1 bln cubic meters per annum;
- the distribution of profit hydrocarbon products depends on the value of the R-factor. The percentages of the investor and the government in profit hydrocarbon products are determined as follows:

| R-factor value | Investor's share | Government's share |
|------------------|------------------|--------------------|
| R-factor < 1 | 65% | 35% |
| 1 ≤ R-factor < 2 | 55% | 45% |
| 2 ≤ R-factor < 3 | 45% | 55% |
| 3 ≤ R-factor | 30% | 70% |

Moreover, it is indicated that the R-factor is the indicator determined as $(X+Y)/Z$, where:

X means: the value of cost hydrocarbon products less royalties accrued on the extracted cost hydrocarbon products accumulated (accrued) from the first accounting period to 31 December of the contract year which immediately precedes the date of R-factor calculation,

Y means: the value of the investor's share in profit hydrocarbon products after deduction of taxes payable accumulated (accrued) from the first accounting period to 31 December of the contract year which immediately precedes the date of R-factor calculation,

Z means: any costs for oil and gas activities accumulated (accrued) from the first accounting period to 31 December of the contract year, which immediately precedes the date of R-factor calculation.

- Information about taxes payable, namely the peculiarities of accrual and accounting of profit tax and royalties are presented in detail. Among other things, it is stated that:

- The object of profit tax for the accounting period is the total value (calculated in accordance with Article 15 of the Agreement) of each investment company's share in profit hydrocarbon products, reduced by the amount of tax costs (the conditions for determining tax costs are described in detail in the extract). The value of cost hydrocarbon products distributed among investment companies is not a taxable item of profit tax under the Agreement.

- The taxable item of the royalties for natural gas and crude oil is the total volume of marketable products for the tax period. For liquefied petroleum (hydrocarbon) gas, the taxable item is the estimated amount of extracted natural gas used in the tax period to obtain liquefied petroleum (hydrocarbon) gas. Unless otherwise provided for in the Agreement, the taxable item of the royalties does not include hydrocarbons used for technological needs as well as hydrocarbons that are lost as provided in Article 17.5 of the Agreement.

The taxable amount of the royalties for the tax period is defined as the total value of the taxable item of the royalties for such tax period which is determined in accordance with Article 15 of the Agreement: for gas – at the book price of natural gas for the reporting accounting period; for crude oil – at the book price of crude oil for the reporting accounting period.

The operator has the right to apply the general rules for determining the taxable item and/or taxable amount of the royalties provided for in the Tax Code of Ukraine (TCU) as of the date of entry into force, taxable amount Article 28.4 of the Agreement.

In this case, if the calculation and publication of data on actual selling prices of gas and crude oil in accordance with the general rules provided for in subparagraph 252.8 of Article 252 of the TCU as of the date of entry into force is not available, to determine the value of marketable products for taxation with the royalties, the procedure of valuation of marketable products, as defined in Article 15 of the Agreement will apply (Articles 15 and 28.4 are not covered in the published extract from the PSA).

Any royalties charged by the operator under the Agreement is included in the costs to be reimbursed (based on this provision, the costs for the royalties are borne by all participants in the process – both investors and the government).

None of the **7 PSA extracts** fully discloses information on the composition of costs to be reimbursed by cost products. For example, it is mentioned in the essential terms and conditions of the PSA for the fields of Ukrgasvydobuvannya JSC stated that the procedure for reimbursement of costs is given in Appendix 1 to the PSA, but Appendix 1 is not attached to the published materials.

There is also no information on environmental tax obligations and land fees **for any of the fields**. In the reporting forms of the EITI approved by the resolution of the Cabinet of Ministers No. 858 dated 23 September 2020⁸, the environmental tax and land fees are included in the list of basic payments

⁸ [Certain issues of ensuring transparency in the extractive industries / Resolution of the Cabinet of Ministers of Ukraine No. 858 dated 23 September 2020](#)

to the government to be made public (subparagraph V.2.). Therefore, it would be appropriate to cover the issue of making these payments in the published terms and conditions of the PSA, along with royalties and profit tax (a generalized list of proposals to supplement the published information on the essential terms and conditions of the PSA, see Appendix 2).

Operational obligations and work program

The following data set in the essential terms and conditions of the PSA, which relates to operational obligations, in particular the work program, is very limited.

In essential terms and conditions and extracts from the PSA with the participation of **Ukrigasvydobuvannya JSC (on 4 fields)** it is stated that the work program and budget of the stage of geological study (for the first 5 years) is defined in Appendix L to the Agreement. Appendix L is not published, i.e. the content of the work program and the budget of the stage of geological study has not been made public. Instead, the text briefly describes the procedure for drawing up and approving five-year and annual work programs and budgets.

Only the names of the main types of work are indicated for Zinkivska (Oil and Gas Overseas Trading BV and Oil and Gas Exploitation LLC) and Uhnivska (WELL KO LLC) fields, in particular: collection and processing of data on the contract field (seismic surveys); arrangement of exploratory wells; reliquidation, restoration, overhaul of wells; preparation and performance of works on intensification of extraction, etc.) - without specifying the scope of these works, detailing of tasks, approximate work deadlines and planned funding.

A little more information on operational obligations and work program is given on the **Sofiivska field (Geo Alliance Partnership LLC and Geo Alliance Partnership B.V.)**. The extract also provides a list of the main types of work and specifies that the geological study is described in Article 4, the development – in Article 5 of the Agreement. Article 4 is partially made public in an extract from the PSA, Article 5 is not. It is noted that the first stage of geological study includes:

- collection, processing and interpretation of two-dimensional existing seismic data on the contract field in the amount of up to 1,700 running kilometers;
- conducting three-dimensional seismic surveys of the contract field with a total area of at least 750 square kilometers;
- reliquidation (restoration, overhaul) of 5 wells and in case of obtaining the amount of hydrocarbons that the operator will consider commercial, installation of 5 wells for trial commissioning with connection of at least 2 of such wells during the first year after the start date;
- drilling of at least 5 exploration wells, while the laying (start of drilling) of at least one exploration well must be carried out by the operator during the first year after the start date;
- stimulation works, including the method of hydraulic fracturing in 6 wells in the case of discovery of non-traditional hydrocarbon deposits and provided that such works are justified;
- construction of new infrastructure facilities and/or acquisition of rights to use the existing infrastructure facilities of other owners in the event of obtaining the amount of hydrocarbons that the operator will consider commercial to connect such facilities, provided that the operator will consider it appropriate, acting solely at own discretion.

The full work program on each PSA is not available in the published information. It is worth noting that such a limited publication of the work program is typical not only for PSAs but also for all Ukrainian agreements on the terms and conditions of subsoil use. As a rule, the work program is an appendix to such an agreement on 1 sheet with a list of the main types of work, indicating their

source of funding, approximate deadlines and, at best, indicating the scope of work (see section on the website of the State Service of Geology and Subsoil of Ukraine⁹).

Social obligations

This issue **is covered in fragments in most cases** in the published information on PSAs, including regulations on participation in the development of local infrastructure and regulations on the use of works, goods and services performed, supplied or provided by economic entities registered within the territorial community where activities are conducted in the extractive industries, as well as requirements for holding public hearings.

It is stated in essential terms and conditions of the PSA with the participation of **Ukrigasvydobuvannya JSC (on 4 fields)** that from the start date the investor, at its own discretion and taking into account the needs of local communities, may spend money on social and industrial development of communities, in case of receiving their requests and recognizing the appropriateness of such costs by the investor.

The investor is obliged to make social investments in accordance with the work programs and budget agreed. Certain projects of the social development program and areas of social investments will be determined by the Investor at the stage of implementation of the Agreement after consultations with governmental authorities, local self-government authorities, community organizations and communities at the discretion of the investor.

Thus, the social obligations in the published terms and conditions of the PSA with the participation of **Ukrigasvydobuvannya JSC** are insufficiently covered, in particular:

- the work programs and budget have not been published, so, it is unknown what indicative areas and volumes of financing of social investments are provided by agreements;
- there is no data on the requirements, obligations and procedure for holding public hearings. It is stated only that certain drafts of the social development program and areas of social investments will be determined after public consultations;
- it is not specified whether the terms and conditions of the PSA contain an obligation of the investor to use the works, goods and services performed, supplied or provided by economic entities registered in the territorial communities within which the extractive activity is conducted. Subparagraphs (M) and (N) of the Investor's Duties section contain only the obligations to give preference to Ukrainian suppliers of goods and services as well as to hire personnel mainly from among the citizens of Ukraine.

The document on the **Uhnivska field (investor – WELL KO LLC)** states that the social investments will be financed within and in accordance with the approved work program and budget. The work program has not been published and the substantive aspects of social investment have not been covered, except for the obligation to build and modernize dual-use infrastructure.

The regulations on participation in social infrastructure development are covered in more detail for the **Zinkivska field (investor – Oil and Gas Overseas Trading BV and Oil and Gas Exploitation LLC)**: investments in social and infrastructure projects under the Agreement will amount to UAH 2.5 million each calendar year at the stage of geological and exploration works and UAH 5.5 million each calendar year at the industrial development stage. For the implementation of social and

⁹ [Special permits for subsoil use issued with agreements on the terms and conditions of subsoil use / Official website of the State Service of Geology and Subsoil of Ukraine](#)

infrastructure projects, it is planned to prepare a social partnership program with the involvement of local, regional authorities, the public and representatives of the operator and/or investors.

This approach, when the social partnership program is developed jointly with local authorities and the public and agreed upon during public hearings, is traditionally used by DTEK group of companies in the regions of their presence^{10,11}. But the published documents on PSA did not present the procedure for holding public hearings. It is not also specified whether the terms and conditions of the Agreement contain an obligation of the investor to use the works, goods and services performed, supplied or provided by economic entities registered in the territorial communities within which the extractive activity is conducted.

Regarding the **Sofiivska field (investor – Geo Alliance Partnership LLC and Geo Alliance Partnership B.V.)**, the provision on social obligations is most fully covered. The Agreement provides for the financing of social development projects, taking into account the following limits: USD 300,000 or the equivalent of this amount in UAH for each contract year for social development programs [a social development program may include financing of dual-use infrastructure, namely construction and repair of roads and bridges, construction of new and repair (re-equipment, modernization) of existing waste management facilities and telecommunications infrastructure] and USD 200,000 or the equivalent of this amount in UAH for each contract year for the development and support of educational institutions and/or educational programs in the field of oil and gas production.

The procedures for approving the social partnership strategy and social development programs are also covered:

- Within 3 months after the start date, a task team for social issues (which may include representatives of the operator, investment companies, public authorities at various levels, local communities, NGOs, industry and other relevant representatives) is formed to discuss and compile a list of social needs of the residents of the territories located within the contract field and prepare social partnership strategies on the basis of such a list;
- within 3 months after the approval of the first social partnership strategy, the operator develops on its basis and submits for discussion by the task team for social issues the first social development program with a list of planned activities and budget for their implementation taking into account the annual limit.

In case of non-fulfillment of social investment obligations, the Agreement provides for the recovery of the amount that should have been spent as a penalty.

As for the employment of personnel from among the citizens of Ukraine, investors (Geo Alliance Partnership LLC and Geo Alliance Partnership B.V.) are obliged to make reasonable efforts to ensure that Ukrainian employees, who are citizens of Ukraine, account for more than 50% of the total number of employees during the validity period of the Agreement. The investor is obliged to carry out oil and gas activities within the limits corresponding to the approved work programs and budgets in such a way as to give preference to goods, works and services of Ukrainian origin, under equal conditions in terms of price, deadlines, quality, compliance with international standards, warranty obligations, and also a number of other obligations aimed at supporting Ukrainian entrepreneurship are also envisaged. However, all these provisions apply to the territory of Ukraine as a whole and are not limited to the territory of communities where oil and gas activities will be performed.

¹⁰ [SOCIAL PARTNERSHIP // DTEK Oil&Gas official website](#)

¹¹ [Development and implementation of DTEK's social partnership strategies with business territories // Official website of the Forum The best Social Projects of Ukraine – Requested on: 3 June 2021](#)

Another important aspect to pay attention to is that under the terms and conditions of PSAs that have been made public, social investment and dual-use infrastructure expenditures are reimbursed by cost hydrocarbons. This provision is covered in the PSA with the participation of **Ukrigasvydobuvannya JSC (on 4 fields)** as well as **Geo Alliance Partnership LLC and Geo Alliance Partnership B.V. (Sofiiska field)** Thus, the costs of social investment are covered not only by the investor but also by the government because in the absence of such a provision, a relevant share of hydrocarbons would not be spent on social investment compensation but added to profit products and distributed between the investor and the government.

Stabilization clauses

Warranties on the stability of the law are covered in the published materials in full, and they are the same for all PSAs by their nature, i.e. in the case of increased tax liabilities and strengthening of legal requirements they provide for the application of laws in force as of the date of entry into force of the PSA, in the case of reduction or mitigation of legal requirements – the application of new rules at the discretion of the investor.

Environmental protection and labour safety

Obligations on environmental protection are set out in some detail but not exhaustively. For example, there are procedures described in the appendices to the PSA, and the appendices are not in public domain. Thus, in terms of the PSA with the participation of Ukrigasvydobuvannya JSC, it is noted that measures to eliminate the consequences of hydrocarbon operations when returning the field are carried out by the investor in accordance with the Agreement and in compliance with Appendix J and the legislation of Ukraine. But Appendix J has not been published.

In general, environmental protection in essential terms and conditions of four PSAs with the participation of Ukrigasvydobuvannya JSC as well as on the Zinkivska field (Oil and Gas Overseas Trading BV and Oil and Gas Exploitation LLC) is covered in more detail than in the documents on the Sofiivska field (Geo Alliance Partnership LLC and Geo Alliance Partnership B.V.) and the Uhnivska field (WELL KO LLC) fields. In particular, the documents of Ukrigasvydobuvannya JSC provide for information on the application of: technological solutions and measures to be implemented to protect the atmosphere and prevent greenhouse gas emissions; pitless drilling; waterproofing of sludge barns; bentonite mats to prevent soil contamination at drilling sites, the use of geomembranes; technologies of drilling sludge dehydration, treatment and neutralization of drilling sewage; neutralization of drilling waste; return of formation water to deep underground horizons.

Requirements for occupational safety and health of employees and contractors involved (and their employees) are covered in detail in the PSA materials with the participation of Ukrigasvydobuvannya JSC (4 sections), Oil and Gas Exploitation LLC (Zinkivska field). It is mentioned in the materials of WELL KO LLC (Uhnivska field) as well as Geo Alliance Partnership LLC and Geo Alliance Partnership B.V. (Sofiivska field) about labour protection in general phrases and very briefly (it would be worthwhile to provide this information in more detail).

Additional questions arising from PSA information made public

Subject of the agreement, rights and obligations of the parties

Information about the subject of the agreement, rights and obligations of the parties regarding the use of subsoil is covered in detail in the essential terms and conditions of the PSAs on all fields. But the following provisions of the agreements raise questions and require public discussion:

1) The obligations of the government in the published terms and conditions of the PSA contain clauses that provide for assistance in giving the investor and contractors any permits required to conduct operations with or in connection with hydrocarbons. It is not entirely clear from the published fragments of the PSA in what specific actions the government will assist.

For example, whether it is about obtaining an environmental impact assessment (EIA) opinion and permits in the field of pollution prevention (especially if there is a delay in issuing the relevant permit and/or opinion due to comments of the public). It would be worthwhile to specify these actions and eliminate possible pressure from the government on the executive authorities, local self-government authorities and the population of the extractive regions. As the legislation currently provides for EIA not before the PSA is signed but after it, such pressure is quite probable, since communities actually join the discussion of project activities in their territories not before but after the government decides to start such activities.

2) A potential concern is the provision available in all 7 PSAs that the government may receive its share of profit hydrocarbons both by products and in cash.

The provisions on the lack of own gas resources of the government in PSAs and the legislation of Ukraine allow for a potential possibility (on condition of signing an additional agreement) for an investor to sell a profit share of hydrocarbons belonging to the government. In this case, an investor has the right to sell distributed hydrocarbons in any market, including to export (Articles 19 and 22 of the Law of Ukraine “On Production Sharing Agreements”¹²). As a result, there is a risk of potential abuse of product understatement when an investor sells profit hydrocarbons to affiliated companies in offshore jurisdictions and makes in other transactions that may harm the government in the form of unearned income.

The concept of “essential terms and conditions” of subsoil use agreements in the legislation of Ukraine

There is a discrepancy in the definition of “essential terms and conditions” of subsoil use agreements in the legislation of Ukraine. Thus, in accordance with subparagraph 3 of Article 11 of the Law of Ukraine “On Ensuring Transparency in the Extractive Industries”¹³, information on the essential terms and conditions of subsoil use agreements must contain 10 items, and in subparagraph 2 of Article 8 of the Law of Ukraine “On Production Sharing Agreements”, essential terms and conditions of PSAs include 32 items. It is important to ensure proper implementation of both laws, eliminate the possibility of ambiguous interpretations and contradictions in the disclosure of information.

¹² [Law of Ukraine “On Production Sharing Agreements” No. 1039-XIV dated 16 October 2020](#)

¹³ [Law of Ukraine “On Ensuring Transparency in the Extractive Industries” No. 2545-VIII dated 13 February 2020](#)

Conclusions

According to the results of comparative analysis of the information published on the essential terms and conditions of 7 PSAs, it was found that:

- **the most complete information was on the Sofiivska field (investor – Geo Alliance Partnership LLC and Geo Alliance Partnership B.V.), and the least – on Uhnivska (investor – WELL KO LLC).** Such differences in making public the essential terms and conditions of the PSAs indicate that the legislation does not clearly define the requirements for the scope and completeness of disclosing this information and, accordingly, the subjects of information disclosure construe the requirements of the Law differently;
- certain aspects such as the **payment procedure, work programs and social obligations are insufficiently covered**, despite the clear requirements of the Law of Ukraine “On Ensuring Transparency in the Extractive Industries”;
- The texts of extracts and essential terms and conditions of the PSAs have **references to appendices or articles that are not presented in the published materials.** Therefore, a short text of the agreements does not provide a holistic view of such important issues as work program, social obligations, payment procedure (including the determination of the government’s share in profit products, procedure for the valuation of marketable products and, consequently, the profit tax and royalties).

Recommendations

UAEITI Implementation Multilateral Group (UAEITI MG):

1) to initiate a dialogue between the Ministry of Energy, civil society and companies on the methods and scope of disclosing information on extractive contracts, develop a common vision and reach a consensus on this issue.

For reference: in accordance with requirement 2.4 (b) of the EITI Standard 2019, the authority of the EITI MG includes planning measures to address any barriers to comprehensive disclosure of contracts..

2) to develop and coordinate at the level of EITI MG a unified approach to the disclosure of the essential terms and conditions of PSAs, taking into account the recommendations set out in Appendix 2 of this study, define clear requirements for the amount of information and content of each item of the essential terms and conditions of PSAs referred to in subparagraph 3 of Article 11 of the Law of Ukraine “On Ensuring Transparency in the Extractive Industries”, in particular:

- the item “conditions on the peculiarities of the payment procedure” should include **not only information about the calculation and payment of taxes but also the scheme of profit production sharing, bonuses provided by the agreement, etc.**;
- **to disclose the terms and conditions of PSAs for the payment of environmental tax and land fees**;
- the item “operational obligations, including work programs” must contain **quantitative and qualitative indicators, approximate deadlines of work performance and the amount of their funding** (and not just the general names of the stages of work);
- the extracts from the PSA **should include those annexes and articles of the PSA which meaningfully supplement or detail the information provided in the essential terms and conditions, and which are referred to in the text of the essential terms and conditions** (e.g., if certain environmental measures are set out in separate appendices to the PSA, they meaningfully supplement the item “commitment to environmental measures”, then the relevant appendices must also be provided for in a published extract from the PSA).

The Ministry of Energy of Ukraine:

1) to detail the obligation of the government within a number of PSAs in terms of assisting the investor and its contractors in issuing any permits required to conduct operations with hydrocarbons. To clarify what exactly the government can do in terms of such assistance, especially at the stage of granting the necessary permits in the field of environmental protection, in particular during the EIA procedure. If possible, to give an official explanation and state the position of the government on these issues.

2) to submit for public discussion with civil society the possibility of selling all profitable products by the investor and obtaining the government’s appropriate share of profit hydrocarbons in cash equivalent as well as related risks for the government (deficit in the domestic gas market, shortfall

of government income to underestimation of the cost of products when the investor sells profit hydrocarbons to affiliated companies, etc.). To consider ways of preventing such risks when entering into future PSAs. Based on the results of the discussions, **to develop and approve a model PSA (or part of it) which will establish the defined rights and obligations of the government.**

For reference: The publication of model contracts is widely practiced worldwide because in this way the “rules of the game” in the field of PSAs become more transparent and understandable both for investors and the public (examples of model contracts including PSAs are available on the Resource Contracts website¹⁴).

3) taking into account the approaches approved by UAEITI MG, to **ensure updated publication of essential terms and conditions, extracts from the PSAs** as well as any amendments to these documents within the timeframe prescribed by law, to eliminate a formal shortcoming in the form of lack of PSA numbers, publish an excerpt from the PSA on Uhnivska field.

4) together with civil society organizations to **study and disseminate the experience of publishing contracts/agreements on the use of subsoil of other countries** as well as to analyze the registries of contracts disclosure.

The Verkhovna Rada of Ukraine

to speed up the consideration and adoption of the draft law No. 3790 “On Amending Certain Legislative Acts of Ukraine on Ensuring Transparency in the Extractive Industries”, which provides for making public the copies of agreements (contracts) on subsoil use entered into from 1 January 2021 in full, and in this way to ensure the fulfillment of requirement 2.4. of EITI Standard 2019.

¹⁴ [Petroleum and Mining Contracts // Resource Contracts](#)

Major characteristics of subsoil fields according to the data published on PSAs concluded

| Item | Special permit for subsoil use | Location | Total area, sq. km | Minerals, whose geological study and extraction is provided by the agreement | Minimum investments during the first stage of geological and exploration works, UAH | Investor |
|---------------------------------|--------------------------------|-------------------------------------|--------------------|---|---|--|
| Uhnivska field ¹⁵ | <u>5217</u> | Lviv and Ivano-Frankivsk oblasts | 967.44 | fossil fuels (natural gas, shale gas, gas of the central basin type, gas (methane) of coal deposits, oil, condensate) | 600 million | WELL KO LLC |
| Zinkivska field ¹⁶ | <u>5149</u> | Sumy and Poltava oblasts | 571.4 | | 500 million | Oil & Gas Overseas Trading BV and Oil and Gas Exploitation LLC (founder – DTEK OIL&GAS B.V.) |
| Sofiivska field ¹⁷ | --- | Chernihiv, Sumy and Poltava oblasts | 2715.95 | | 1 bln | Geo Alliance Partnership LLC and Geo Alliance Partnership B.V. |
| Balakliiska field ¹⁸ | <u>5151</u> | Kharkiv Oblast | 1119.25 | | 800 million | Ukr gasvydobuvannya JSC |
| Ivanivska field ¹⁹ | <u>5154</u> | Kharkiv Oblast | 841.61 | | 800 million | Ukr gasvydobuvannya JSC |

¹⁵ [On holding a tender for a hydrocarbon sharing agreement to be extracted within the Uhnivska field / Resolution of the Cabinet of Ministers of Ukraine No. 1189 dated 18 December 2018](#)

¹⁶ [On holding a tender for a hydrocarbon sharing agreement to be extracted within the Zinkivska field / Resolution of the Cabinet of Ministers of Ukraine No. 1183 dated 18 December 2018](#)

¹⁷ [On holding a tender for a hydrocarbon sharing agreement to be extracted within the Sofiivska field / Resolution of the Cabinet of Ministers of Ukraine No. 1187 dated 18 December 2018](#)

¹⁸ [On holding a tender for a hydrocarbon sharing agreement to be extracted within the Balakliiska field / Resolution of the Cabinet of Ministers of Ukraine No. 1186 dated 18 December 2018](#)

¹⁹ [On holding a tender for a hydrocarbon sharing agreement to be extracted within the Ivanivska field / Resolution of the Cabinet of Ministers of Ukraine No. 1184 dated 18 December 2018](#)

| | | | | | | |
|----------------------------------|-------------|--|--------|--|-------------|-------------------------|
| Buzivska field ²⁰ | <u>5152</u> | Kharkiv and Dnipropetrovsk oblasts | 669.65 | | 600 million | Ukrigasvydobuvannya JSC |
| Berestianska field ²¹ | <u>5153</u> | Lviv and Kharkiv oblasts (the field consists of 4 parts, 3 – y in Lviv Oblast and 1 in Kharkiv Oblast) | 286.38 | | 450 million | Ukrigasvydobuvannya JSC |

²⁰ [On holding a tender for a hydrocarbon sharing agreement to be extracted within the Buzivska field / Resolution of the Cabinet of Ministers of Ukraine No. 1182 dated 18 December 2018](#)

²¹ [On holding a tender for a hydrocarbon sharing agreement to be extracted within the Berestianska field / Resolution of the Cabinet of Ministers of Ukraine No. 1188 dated 18 December 2018](#)

Recommendations for supplementing the published essential terms and conditions of the PSA

| Name of the field and the investment company | Information on the essential terms and conditions of the PSA that needs to be supplemented |
|--|---|
| Uhnivska field (WELL KO LLC) | <p>1) Features of the payment procedure:</p> <ul style="list-style-type: none"> - the procedure for distribution of profit products between the government and the investor; - the procedure for the valuation of extracted hydrocarbons for the purposes of calculating profit tax and royalties; - tax obligations under the agreement; - information on other payments, bonuses, etc. (if such payments are prescribed by the agreement). <p>2) Composition of the costs to be reimbursed by cost products</p> <p>3) Operational obligations and work program:</p> <ul style="list-style-type: none"> - detailed information about each type of work; - volumes of work, specifying quantitative and qualitative indicators; - approximate work performance deadlines; - volumes of planned financing of works. <p>4) Social obligations:</p> <ul style="list-style-type: none"> - detailed obligations to build and modernize dual-use infrastructure; - volumes of financing of social investments provided by the Work Program and the Budget; - information about the requirements, obligations and procedure for holding public hearings (if such obligations are not provided for in the agreement, indicate it in the essential terms and conditions); - obligations to use works, goods and services performed, supplied or provided by economic entities registered within the territorial community in whose territory the activities in the extractive industries are carried out (if such obligations are not provided for in the agreement, indicate it in the essential terms and conditions). <p>5) Environmental measures and labour safety:</p> <ul style="list-style-type: none"> - comprehensive information on environmental measures provided for in the agreement; |

| | |
|--|---|
| | <ul style="list-style-type: none"> - expanded information about the requirements for the occupational safety and health of employees and contractors, including their employees. <p>6) Appendices and articles of the PSA which substantially supplement and detail the information presented in the essential terms and conditions and to which the text of the essential terms and conditions refers.</p> <p>7) PSA number</p> |
| <p>Zinkivska field (Oil & Gas Overseas Trading BV and Oil and Gas Exploitation LLC)</p> | <p>1) Features of the payment procedure:</p> <ul style="list-style-type: none"> - the procedure for distribution of profit products between the government and the investor; - the procedure for the valuation of extracted hydrocarbons for the purposes of calculating profit tax and royalties; - obligations to pay the environmental tax and land fee; - amounts of one-time bonuses to the government for signing (entering into) the agreement and one-time bonuses for the first commercial opening; - information on other payments, bonuses, etc. (if such payments are prescribed by the agreement). <p>2) Composition of the costs to be reimbursed by cost products.</p> <p>3) Operational obligations and work program:</p> <ul style="list-style-type: none"> - detailed information about each type of work; - volumes of work, specifying quantitative and qualitative indicators; - approximate work performance deadlines; - volumes of planned financing of works. <p>4) Social obligations:</p> <ul style="list-style-type: none"> - information about the requirements, obligations and procedure for holding public hearings (if such obligations are not provided for in the agreement, indicate it in the essential terms and conditions); - obligations to use works, goods and services performed, supplied or provided by economic entities registered within the territorial community in whose territory the activities in the extractive industries are carried out (if such obligations are not provided for in the agreement, indicate it in the essential terms and conditions). <p>5) Appendices and articles of the PSA which substantially supplement and detail the information presented in the essential terms and conditions and to which the text of the essential terms and conditions refers.</p> <p>6) PSA number</p> |

Sofiivska field
(Geo Alliance Partnership LLC
and Geo Alliance Partnership
B.V.)

1) Features of the payment procedure:

- Articles 15 (procedure for determining the total value of profit hydrocarbon products) and 28.4 of the PSA (rules for determining the taxable item and/or taxable amount of the royalties provided for in the PSA);
- obligations to pay the environmental tax and land fee;

2) Composition of the costs to be reimbursed by cost products.

3) Operational obligations and work program:

- Article 5 of the PSA (the work program planned at the stage of geological development)
- approximate work performance deadlines;
- volumes of planned financing of works.

4) Social obligations:

- information about the requirements, obligations and procedure for holding public hearings (if such obligations are not provided for in the agreement, indicate it in the essential terms and conditions);

5) Environmental measures and labour safety:

- comprehensive information on environmental measures provided for in the agreement;
- expanded information about the requirements for the occupational safety and health of employees and contractors, including their employees.

6) Appendices and articles of the PSA which substantially supplement and detail the information presented in the essential terms and conditions and to which the text of the essential terms and conditions refers.

**Balakliiska, Berestianska,
Buzivska and Ivanivska fields**
(Ukrigasvydobuvannya JSC)

1) Features of the payment procedure:

- the procedure for distribution of profit products between the government and the investor;
- additional provisions on payment of the excise tax prescribed by the PSA;
- obligations to pay the environmental tax and land fee;
- procedure for the valuation of extracted hydrocarbons for the purposes of calculating profit tax and royalties.

2) Composition of the costs to be reimbursed by cost products (Appendix 1 to the PSA)

3) Operational obligations and work program:

- Appendix L [work program and budget of the stage of geological study (for the first 5 years)];
- any other information relating to the operational obligations and work program.

4) Social obligations:

- volumes of social investment financing are provided by the PSA;
- information about the requirements, obligations and procedure for holding public hearings (if such obligations are not provided for in the agreement, indicate it in the essential terms and conditions);
- investing in dual-use infrastructure;
- obligations to use works, goods and services performed, supplied or provided by economic entities registered within the territorial community in whose territory the activities in the extractive industries are carried out (if such obligations are not provided for in the agreement, indicate it in the essential terms and conditions).

5) Environmental measures and labour safety:

- measures to eliminate the consequences of hydrocarbon operations when returning the field conducted pursuant to Appendix J.

6) Appendices and articles of the PSA which substantially supplement and detail the information presented in the essential terms and conditions and to which the text of the essential terms and conditions refers.

7) PSA number