



**CORRUPTION RISKS IN THE FIELD OF SUBSOIL
USE AND PROTECTION: ANTI-CORRUPTION
MEASURES FOR THEIR ELIMINATION**



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The manual is devoted to a comprehensive study of key corruption risks in the field of subsoil use in Ukraine, as well as to the development of practical anti-corruption measures aimed at their prevention and elimination. The publication systematically highlights issues related to obtaining special permits for subsoil use, including oil- and gas-bearing subsoil, analyzes the specifics of concluding Production Sharing Agreements, and examines the particularities of managing strategic and critical mineral resources in Ukraine and worldwide. The publication contains recommendations, analysis of real cases, action algorithms, a review of the current legislation of Ukraine as of December 2025, and policies concerning the intensive extraction of rare and rare earth metals in Ukraine.

The manual is intended for representatives of civil society organizations, investigative journalists, lawyers, environmental experts, and environmental defenders working in the fields of subsoil use, environmental policy, environmental protection, and anti-corruption activities.

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INTRODUCTION

The field of subsoil use in Ukraine remains one of the most closed sectors of economic activity. This is due to the particular value of subsoil resources themselves, especially in monetary terms, and the reluctance to grant access to their use to a broad range of actors, even where such actors meet the criteria established by law.

Historically, Ukrainian deposits and subsoil plots have, for decades, largely remained in the hands of actors who often occupy monopolistic positions in the market. Information on the location of subsoil use objects, as well as on the entities that exploit them, is currently inaccessible. This is partly due to the ongoing martial law in Ukraine, introduced on 24 February 2022, which limits the possibility of exercising proper public oversight in the sector.

In Ukraine, the regulation of relations in the field of protection, use, and reproduction of natural resources, as well as their conservation, constitutes one of the core objectives of environmental legislation.

Article 13 of the Constitution of Ukraine establishes that land, subsoil, atmospheric air, water, and other natural resources located within the territory of Ukraine, as well as natural resources of its continental shelf and exclusive (maritime) economic zone, are objects of the property rights of the Ukrainian people.

Subsoil is granted for use for purposes of geological exploration, extraction of mineral resources, construction and operation of underground structures not related to mineral extraction, creation of geological territories and objects of significant scientific, cultural, or sanitary and health value, as well as for activities provided for under Production Sharing Agreements. The right to such use is certified by a special permit for subsoil use.

Among various types of economic activities in Ukraine that have significant and harmful environmental impacts, particular attention should be given to activities related to the extraction of minerals of both national and local significance. This is because mineral extraction leads to environmental changes, destruction of established ecosystems, deterioration of

environmental indicators, and the emergence of other negative factors affecting human life and ecosystems.

Subsoil, as a natural resource, is subject to legal protection. Since subsoil constitutes the exclusive property of the Ukrainian people and may only be granted for use, the state is obliged at the legislative level to establish transparent, clear, and fair conditions and rules governing subsoil use, protection, and development. This is necessary to prevent any unlawful use of subsoil and to avert corruption in this sphere.

In general, corruption is a phenomenon that poses a direct threat to human rights, democracy, the rule of law, and social justice. It is a major obstacle to the successful development of any country, territorial unit, or business environment. Unfortunately, in Ukraine corruption has effectively become an «active actor», with manifestations present in almost all spheres of political and social life; the subsoil use sector is no exception.

Due to its capital intensity and regulatory complexity, the extractive industry is one of the sectors most vulnerable to corruption schemes. Moreover, this sector is characterized by a high level of corruption risks that may lead to corruption offenses.

At the end of 2022, the Law of Ukraine «On Amendments to Certain Legislative Acts of Ukraine Regarding the Improvement of Legislation in the Field of Subsoil Use» dated 01 December 2022, No. 2805-IX (hereinafter – the Deregulation Law) was adopted, introducing changes to sectoral legislation, including the Subsoil Code of Ukraine.

Unfortunately, in the pursuit of «simplification» and removal of barriers for potential investors – which was presented as the main objective of the Deregulation Law – in practice this has resulted in a significant weakening of the protection of state interests, a reduced role of local communities and infringement of their interests in subsoil use matters, as well as legislative shortcomings that may have corruption-related consequences.

At present, a key priority for public authorities should be the prevention of corruption, including the identification of corruption risks in existing laws, regulations, the activities of permitting authorities and state control bodies, as well as the identification of other corruption risks and the implementation of measures to eliminate them.

Currently, Ukraine is actively discussing the large-scale extraction of rare and rare earth metals. However, alongside efforts to achieve economic growth through their extraction, environmental risks to society are not being adequately assessed. The extraction of rare earth metals is associated with significant environmental risks, including chemical contamination of water and soil, generation of hazardous radioactive waste, and destruction of natural ecosystems. Environmentally unjustified development of such deposits may alter the overall environmental situation in the country and trigger irreversible negative processes.

Under these conditions, Ukraine faces an urgent need to reduce and eliminate corruption risks in the field of subsoil use, which may hinder the progressive development of the extractive sector and indirectly cause significant environmental damage.

The purpose of this manual is to identify and examine the main corruption risks in the field of subsoil use, to detect shortcomings in national legislation that create preconditions for such risks, and to develop recommendations for amending existing legal acts in order to improve decision-making processes related to the issuance of permits and to eliminate gaps that may serve as loopholes for corruption.

To achieve this objective, an analysis has been conducted of current anti-corruption legislation, legislation governing subsoil use and protection, land protection, state control over subsoil use, as well as sector-specific environmental legislation.

1

SPECIFICS OF GRANTING SPECIAL PERMITS FOR SUBSOIL USE



Before examining potential corruption risks in the process of issuing a special permit for subsoil use, it is appropriate to consider in greater detail each stage of the procedure for obtaining such a permitting document.

A special permit for subsoil use is a permitting document issued by the State Service of Geology and Subsoil of Ukraine and certifies the right of a legal entity or an individual to use subsoil for the purposes of mineral extraction and/or geological exploration.

A special permit for subsoil use is granted based on the results of an auction (electronic bidding), and, where grounds specified in Part 1 of Article 16-2 of the Subsoil Code of Ukraine exist, without conducting an auction (electronic bidding) (Part 1, Article 16 of the Subsoil Code of Ukraine).

Article 14 of the Subsoil Code of Ukraine defines the following types of special permits for subsoil use, which are granted for:

- geological exploration, including pilot industrial development of mineral deposits, with subsequent extraction (commercial development of deposits);
- mineral extraction;
- construction and operation of underground structures not related to mineral extraction, including facilities for underground storage of oil, gas, and other substances and materials;
- creation of geological territories and objects of significant scientific, cultural, sanitary, and health value (scientific testing grounds, geological reserves, sanctuaries, natural monuments, medical and health institutions) (except for oil- and gas-bearing subsoil);
- performance of works (activities) provided for under a Production Sharing Agreement (PSA).

Until 26 July 2023, the issue of granting special permits for subsoil use within the territory of Ukraine, its continental shelf, and exclusive

(maritime) economic zone was regulated by the Procedure for Granting Special Permits for Subsoil Use, approved by Resolution of the Cabinet of Ministers of Ukraine No. 615 dated 30 May 2011.

Following the repeal of this Procedure, the process for granting (or refusing to grant) a special permit for subsoil use is governed by the Law of Ukraine «On the Permitting System in the Sphere of Economic Activity» dated 06 September 2005, No. 2806-IV. This law defines the legal and organizational framework of the permitting system in economic activity and establishes the procedure for the activities of permitting authorities authorized to issue permitting documents, as well as administrators, taking into account the specifics defined by the Subsoil Code of Ukraine and the Law of Ukraine «On Production Sharing Agreements».

According to item 133 of the Annex to the Law of Ukraine «On the List of Permitting Documents in the Sphere of Economic Activity» dated 19 May 2011, No. 3392-VI, special permits for subsoil use within specific subsoil plots, as defined by the Subsoil Code of Ukraine, are included in the official list of permitting documents in the sphere of economic activity.

Accordingly, since the procedures for obtaining a special permit for subsoil use differ depending on whether they are conducted through an auction (electronic bidding) or without an auction (electronic bidding), each of these procedures will be examined below, including the stages leading up to the decision to carry out economic activity.

The procedure for obtaining a special permit without an auction (electronic bidding) consists of the following stages:

1. Submission of an application: where grounds specified in Part 1 of Article 16-2 of the Subsoil Code of Ukraine exist, the applicant (a legal entity or an individual entrepreneur) submits an application to the relevant permitting authority via the electronic cabinet of the subsoil user. The application must indicate the name of the subsoil plot and the grounds for obtaining a special permit without an auction (electronic bidding), and must be accompanied by documents listed in Parts 2-6 of Article 16-2 of the Subsoil Code of Ukraine.

2. Review of the application by the permitting authority. For obtaining a special permit for mineral extraction, additional information must be submitted regarding the protocols of the State Commission of Ukraine on Mineral Reserves approving the mineral reserves.

3. In accordance with Part 3 of Article 16-3 of the Subsoil Code of Ukraine, within 25 working days from the date of receipt of the application, the permitting authority adopts a decision to grant or refuse to grant a special permit for subsoil use without an auction (electronic bidding), as well as to extend or amend it.

4. The applicant signs the relevant agreement on the conditions of subsoil use (if the special permit is granted).

5. Information on the special permit and the agreement on subsoil use conditions is entered into the State Register of Special Permits for Subsoil Use (if the permit is granted).

6. Issuance of the special permit for subsoil use.

7. Environmental Impact Assessment (EIA) is conducted where subsoil use is associated with activities specified in Parts 2 and 3 of Article 3 of the Law of Ukraine «On Environmental Impact Assessment».

8. Submission of the EIA conclusion to the Ministry of Economy.

9. Adoption of a decision on the planned activity.

Procedure for Obtaining a Special Permit Based on Auction Results (Electronic Bidding) includes the following stages:

1. Submission of an application to initiate the sale of a special permit: Persons entitled to be subsoil users, as defined in Part 1 of Article 13 of the Subsoil Code of Ukraine, submit an application in electronic form via the electronic cabinet of the subsoil user on the State Geological Web Portal (the procedure is defined by the Regulation on the Electronic Cabinet of the Subsoil User, approved by Order of the Ministry of Environmental Protection and Natural Resources of Ukraine dated 28 March 2023, No. 177).

2. Adoption by the State Service of Geology and Subsoil of Ukraine of a decision to announce an auction (electronic bidding) for granting a special permit for subsoil use.

3. Approval by the Ministry of Economy of the subsoil plot proposed for auction (electronic bidding) for granting a special permit for geological exploration, including pilot industrial development, with subsequent mineral extraction (commercial development of deposits) (Part 11, Article 16 of the Subsoil Code of Ukraine).

4. Conduct of state expert examination and evaluation of explored mineral reserves in accordance with the established procedure, or appraisal of forecast (prospective) mineral resources by the State Commission of Ukraine on Mineral Reserves, subject to subsequent approval of such reserves (prior to obtaining a special permit for mineral extraction) (Part 14, Article 16 of the Subsoil Code of Ukraine).

5. Conduct of the auction (electronic bidding) for the sale of a special permit for subsoil use through a two-tier automated information and communication system (in accordance with the Procedure for Conducting Auctions for the Sale of Special Permits for Subsoil Use, approved by Resolution of the Cabinet of Ministers of Ukraine dated 23 September 2020, No. 993).

6. Adoption of a decision to grant the special permit based on the auction results (Part 2, Article 16-3 of the Subsoil Code of Ukraine).

7. Execution of an agreement on subsoil use conditions by the applicant.

8. Entry into the State Register of Special Permits for Subsoil Use of information on the special permit and the agreement on subsoil use conditions.

9. Issuance of the special permit to the auction winner upon request.

10. Environmental Impact Assessment (EIA) is conducted where subsoil use involves activities specified in Parts 2 and 3 of Article 3 of the Law of Ukraine «On Environmental Impact Assessment».

11. Submission of the EIA conclusion to the Ministry of Economy.

12. Adoption of a decision on the planned activity.

At these stages, public participation in subsoil use processes occurs only during the EIA procedure, where grounds provided by law exist. The procedure for issuing a special permit is complex and non-transparent, which creates risks for corrupt decision-making.

The lack of transparency in this procedure prevents proper assessment of the investor's actual environmental and social obligations, while the limitation of community participation at the decision-making stage for issuing a special permit constitutes a significant corruption risk.

Procedure for Transfer of Subsoil Use Rights

The Law of Ukraine dated 01 December 2022, No. 2805-IX «On Amendments to Certain Legislative Acts of Ukraine Regarding the Improvement of Legislation in the Field of Subsoil Use» introduced the free circulation of special permits for subsoil use. The Subsoil Code of Ukraine was supplemented by Article 16-1, which established a legal mechanism for the transfer of subsoil use rights and for contributing such rights as a contribution to joint activity.

Accordingly, a subsoil user holding a special permit for subsoil use may fully or partially transfer such rights to another legal entity or individual entrepreneur by:

- concluding a sale and purchase agreement for the rights provided under the special permit;
- contributing such rights to the authorized capital;
- contributing part of such rights as a contribution to joint activity.

Such transfer is permitted provided that the acquiring entity is not subject to sanctions and is not registered in the territory of an aggressor state. The relevant information is verified by the State Service of Geology and Subsoil at the stage of issuance, reissuance, or amendment of the special permit for transfer to the new subsoil user.

The transfer of rights may be carried out only after the following actions have been completed:

- division of reserves between subsoil plots of a previously explored mineral deposit for which the subsoil user has been granted a special permit;
- approval of such divided reserves by the State Commission of Ukraine on Mineral Reserves;
- amendment of the existing special permit or issuance of a separate special permit for the allocated subsoil plot.

At the same time, the acquiring entity obtains, in full, the rights and obligations related to the planned activity based on the existing EIA conclusion and the decision on the planned activity. Amendments to these permitting documents are not required by law. The legislation provides only for amendments to the special permit concerning the new holder of the subsoil use right. Thus, the law does not require the new subsoil user to undergo a new EIA procedure or obtain a new EIA conclusion.

In accordance with Part 1, item 9 of Article 16-5 of the Subsoil Code of Ukraine, amendments to a special permit are made on the basis of an application by the subsoil user and supporting documents in the case of transfer of subsoil use rights through a sale and purchase agreement or contribution to the authorized capital of a business entity established with its participation. Such amendments concern exclusively the holder of the special permit. The provision does not require submission of the EIA conclusion or its details together with the application, and a similar requirement is absent from the Law of Ukraine «On Environmental Impact Assessment».

Subsoil use rights granted under a special permit within a Production Sharing Agreement (PSA) may also be transferred to third parties simultaneously with the transfer of rights and obligations under the respective PSA, subject to mandatory reissuance of the special permit in accordance with the Law of Ukraine «On Production Sharing Agreements», which requires approval of such transfer by the Cabinet of Ministers of Ukraine.

State-owned companies may transfer subsoil use rights only to other state-owned enterprises. At the same time, the law allows for the transfer of such rights to non-state enterprises by decision of the Cabinet of Ministers of Ukraine.

Thus, in the event of transfer of rights under a special permit to another entity, neither a repeated EIA procedure nor amendments to the EIA conclusion issued to the previous holder are required.

Such simplification of economic activity is aimed solely at facilitating transactions involving the transfer of special permits for subsoil use and does not comply with the requirements of environmental legislation.

2

CORRUPTION RISKS IN THE PROCEDURE FOR ISSUING SPECIAL PERMITS FOR SUBSOIL USE



At all stages of the procedure for granting and obtaining a special permit for subsoil use, corruption risks may arise in the interactions between applicants and permitting authorities, aimed at granting unjustified privileges in obtaining a subsoil plot for use.

1. Granting unjustified advantages to legal entities/individuals in obtaining a special permit without an auction.

According to Part 1 of Article 16-2 of the Subsoil Code of Ukraine, a special permit for subsoil use is granted without conducting an auction (electronic bidding) in cases of mineral extraction where the applicant, on the basis of a special permit for geological exploration (including pilot industrial development with subsequent extraction), has, at its own expense, carried out geological exploration of the subsoil plot, evaluation of mineral reserves, and appraisal of forecast (prospective) mineral resources approved by the State Commission of Ukraine on Mineral Reserves, and has submitted documents for obtaining a special permit for mineral extraction on the respective subsoil plot no later than two years after the expiration of the relevant exploration permit.

This legal provision creates unjustified advantages for a given business entity, which in itself constitutes a corruption risk, as well as a risk to fair competition – one of the foundations of effective subsoil use. At the same time, introducing a system where special permits are granted exclusively through auctions would require the development of a legal mechanism for reimbursing exploration costs or introducing a cost-recovery mechanism based on pilot industrial development, followed by transferring the subsoil plot to auction.

According to Article 42 of the Constitution of Ukraine, the state ensures the protection of competition in entrepreneurial activity. Abuse of a monopolistic position in the market, unlawful restriction of competition, and unfair competition are prohibited.

Contrary to the above, the current legal framework effectively allows a given business entity (often a «monopolist») not only to obtain a special permit under unequal conditions (without competitive bidding), but also provides additional advantages, including the possibility of expanding activities from geological exploration to direct industrial extraction without an auction.

The corruption risk is further intensified by the possibility of expanding the list of mineral resources within a single subsoil plot. A subsoil user who, in the course of extraction activities, discovers another mineral resource not specified in the special permit, and intends to extract it, has the right to amend the permit and expand the list of extracted minerals.

Given the priority right to formalize newly discovered minerals and expand the boundaries of the subsoil plot in depth, a potential investor who possesses geological documentation – especially one who conducted exploration at their own expense and discovered valuable (rare) minerals – may omit such information from the report and later «discover» it during extraction. This may significantly reduce the effective «value» of the subsoil use right.

2. Approval by the Ministry of Economy of subsoil plots at the stage of listing them for auction.

According to Article 16 of the Subsoil Code of Ukraine, subsoil plots proposed for auction (electronic bidding) for granting a special permit for geological exploration (including pilot industrial development with subsequent extraction) must be approved by the Ministry of Economy, indicating the conditions under which subsoil use is permissible (in terms of compliance with environmental legislation), within 15 working days from the date of receipt of the request from the permitting authority along with the required documents. In case of refusal, the Ministry of Economy provides substantiated comments (including ways to address them) regarding the impossibility of subsoil use on the proposed plot in compliance with environmental legislation. Such approvals and comments must be published on the official website of the Ministry of Economy within three working days after the decision is made.

However, the conditions, scope of information assessed, and criteria for granting or refusing such approval are not clearly defined, which in itself constitutes a corruption-prone factor. At this stage, it is extremely

difficult to determine appropriate conditions, restrictions, and limitations without sufficient information from the relevant territorial unit and without analysis by competent specialists in geology, ecology, hydrology, land use, etc. An exception may be the identification of forests, protected (water protection) zones, nature reserve areas, and similar features.

It is noteworthy that in the event the Ministry of Economy fails to provide approval or refusal to grant approval regarding the proposed subsoil plot within 15 working days from the date of receipt of the request from the permitting authority, it shall be deemed that approval for the proposed subsoil plot to be put up for auction (electronic bidding) has been granted. Where there are contacts between the interested party and representatives of the authorized body, a response to the request may be absent.

Moreover, current legislation does not establish any liability for officials of the Ministry of Economy for improper approvals that may subsequently result in negative environmental consequences. In practice, the Ministry's participation at this stage is largely declarative and does not produce legal consequences, as it may effectively take no action at all.

A potential solution to this issue would be to establish, at the legislative level, a mandatory preliminary environmental risk assessment at the stage of preparing a subsoil plot for auction (this issue is discussed in more detail in Section 4 of the manual).

3. Collusion among auction participants (electronic bidding).

Collusion in bidding processes is also relevant in the context of selling special permits for subsoil use. Such collusion involves coordinated actions by two or more participants that lead or may lead to the exclusion, elimination, or restriction of the rights of other participants. This constitutes a corruption risk and a direct manifestation of unfair competition aimed at acquiring a promising subsoil plot at a minimal price.

A typical pattern involves one genuine bidder and one or more technical participants, all of whom may belong to a closed circle of a monopolist or a group of interested parties.

In accordance with Article 31 of the Procedure for Conducting Auctions (Electronic Bidding) for the Sale of Special Permits for Subsoil Use, approved by Resolution of the Cabinet of Ministers of Ukraine dated 23 September 2020, No. 993 (hereinafter – the Procedure), if the winner

refuses to sign the sale and purchase agreement for the permit, or a conditional sale and purchase agreement, or fails to sign such agreement within the set timelines, the State Service of Geology and Subsoil uploads the relevant decision into the electronic auction system.

In such a case, a new protocol is automatically generated, in which the winner is determined as the participant with the next highest price offer, or, in the case of identical bids, the participant who submitted the bid earlier according to the time-recording system of the electronic auction platform.

Under these circumstances, several schemes are possible: from passive participation of technical bidders to an initial artificially inflated bid submitted by a technical participant, which discourages other bidders (except the interested party) from continuing the auction. Following the auction, the winner refuses the «win», and the second-place participant with a minimal bid obtains the desired subsoil plot. Financial losses in the form of non-refundable deposits do occur, but such losses are often justified, especially in cases involving valuable mineral resources.

Such schemes may also be concealed, where «subsoil interest groups» participate across multiple auctions: one party may seek sand, while another targets titanium or lithium. For example, information from Prozorro.Sale on the auction of a special permit for subsoil use for the «Zalisy-Shmenky Ore-bearing Filed» plot, located in Ratne district of Volyn region, illustrates such practices¹.

Collusion is often quite evident, particularly through information on ultimate beneficial owners, affiliated companies, or common ownership within a group of companies.

Despite this, the State Service of Geology and Subsoil lacks effective tools to respond even to obvious violations of the principles of fair competition, primarily due to the absence of appropriate powers. Notably, Article 34 of the Procedure defines an exhaustive list of grounds under which an auction may be declared invalid. The legislation does not provide for cancellation of an auction on the grounds of suspected collusion. Such matters fall within the competence of supervisory, law enforcement, or judicial authorities at later stages, often when consequences are already irreversible.

¹ <https://prozorro.sale/auction/?query=заліси-шменьки>

The Antimonopoly Committee of Ukraine (AMCU) is authorized to review auctions for the sale of special permits for subsoil use, including with regard to collusion (anticompetitive concerted actions), in accordance with the Law of Ukraine «On Protection of Economic Competition». However, in practice, the AMCU does not initiate court proceedings to invalidate auction results, but rather imposes penalties on violators (further details are provided in Section 11 of the manual).

Although the state, represented by the Cabinet of Ministers of Ukraine, has taken steps to reduce such abuses by adopting Resolution No. 247 dated 21 March 2023, which increased non-refundable guarantee deposits for subsoil use auctions, this measure has not fully resolved the issue, and large participants continue to engage in such «unfair practices».

4. Limited access to geological information.

According to the Procedure for the Management of Geological Information, approved by Resolution of the Cabinet of Ministers of Ukraine dated 7 November 2018, No. 939, geological information created (or acquired) using state budget funds is state property. The State Service of Geology and Subsoil is the holder of geological information owned by the state.

Access to primary and secondary geological information held by the state is formally free of charge. Secondary geological information is published in open online access on the State Geological Web Portal, while primary information is made available for review at designated storage locations. Applicants may, at their own expense, create digital copies for independent analysis.

In practice, however, geological information remains inaccessible to the general public, and access is effectively limited to a narrow circle of influential and interested actors in the subsoil sector.

This situation prevents genuine investors from participating in competitive processes for obtaining special permits so as to avoid «buying a pig in a poke, while enabling those with privileged access to geological and related information to acquire desirable subsoil plots.

Such corruption loopholes lead to economic and reputational losses for the state and harm public interests, particularly in the areas of environmental protection and conservation of natural resources.

5. Transfer of subsoil use rights to third parties.

The establishment at the legislative level of such a legal construct – the right to alienate a special permit for subsoil use, in particular by concluding a sale and purchase agreement, may serve as a so-called loophole for potential subsoil users to circumvent the procedure for obtaining a special permit based on the results of an auction. In such a case, a person acquires a special permit not on a competitive basis and in violation of legislation on protection of economic competition and without compliance with the principle of transparency and openness of the competitive system when selecting the winner of the competition for obtaining special permits for subsoil use.

Also, since the acquirer of the special permit is not obliged to obtain new approval from the Ministry of Economy and to reissue the Environmental Impact Assessment conclusion, the public that participated in the EIA procedure for the specified planned activity, as well as the Ministry of Economy itself, will not be informed about the change of the subsoil user.

The Law also provides for the possibility to alienate the right to subsoil use of state enterprises in favor of private enterprises by decision of the Cabinet of Ministers. Such a provision is questionable from the perspective of creating the possibility of transfer of state assets *to private subsoil users outside of competition in a potentially non-transparent manner solely on the basis of a decision of the Cabinet of Ministers*.

In addition, there is a risk of uncontrolled resale of special permits, since the State Service of Geology and Subsoil does not control the procedure of alienation of special permits itself; it does not possess information regarding *«the price of each special permit, payment for which is stipulated during the alienation procedure, as well as the price of each special permit that was alienated through contribution to the charter capital or as a contribution to joint activity»*, since upon reissuance of the special permit the State Service of Geology and Subsoil is not provided with copies of sale and purchase agreements and other information related to alienation². The Law also does not provide any restrictions regarding the maximum number of times a special permit may be alienated and does not establish a minimum period of holding such a special permit that would grant the right to alienate it.

² <https://nadra.info/2024/10/the-secondary-market-of-special-permits-55-deposits-have-already-changed-users/>

3

LEGISLATIVE REGULATION OF THE PROCEDURE FOR GRANTING A SPECIAL PERMIT FOR THE USE OF OIL- AND GAS-BEARING SUBSOIL



The oil and gas industry is one of the leading sectors of Ukraine's economy. Enterprises operating in this field ensure the exploration, prospecting, and development of oil and gas deposits and form part of the state's fuel and energy complex.

Oil and natural gas (fossil fuels) are non-renewable energy sources formed from hydrocarbons, the use of which pollutes the environment. The combustion of fossil fuels results in the formation of harmful substances and greenhouse gases that pollute the air and contribute to climate change.

In Ukraine, oil- and gas-bearing regions are defined as territories where deposits of oil and gas have been identified. Within Ukraine, three such regions are distinguished:

1. *Eastern region – Dnipro-Donets Basin;*
2. *Western region – Western Ukrainian region:*
 - Volyn-Podillia gas and oil province;
 - Pre-Carpathian oil and gas province;
 - Carpathian folded oil-bearing area;
 - Transcarpathian gas-bearing area;
3. *Southern region – South-Crimean oil and gas province³.*

In implementation of the deregulation law in the field of subsoil use, the Procedure for Maintaining the Register of Oil and Gas Wells was adopted by Resolution of the Cabinet of Ministers of Ukraine dated 21 July 2023, No. 750. This Procedure aims to *ensure comprehensive accounting of all existing oil and gas wells in Ukraine, enabling analysis of the mineral resource base and prevention of illegal hydrocarbon extraction.*

³ https://vue.gov.ua/Нафтогазоносні_регіони_України

Oil- and gas-bearing subsoil is defined as the part of the Earth's crust beneath the surface of land and water bodies, extending to depths accessible for geological exploration and development, and containing oil, gas, and associated components.

The use of oil- and gas-bearing subsoil includes geological exploration and development activities carried out for the following purposes:

- prospecting and exploration of oil and gas deposits;
- extraction of oil and gas or their storage;
- reinjection (disposal) of associated and produced water, as well as other waste generated during exploration and development of oil and gas deposits.

A user of oil- and gas-bearing subsoil may be a legal entity or an individual holding a special permit for subsoil use for prospecting and exploration of oil and gas deposits, extraction or storage of oil and gas, or reinjection (disposal) of associated water and other waste generated during exploration and development activities.

Thus, the use of oil- and gas-bearing subsoil, including prospecting, exploration, exploitation of deposits, and construction and operation of underground storage facilities for oil and gas, may be carried out only on the basis of a special permit for subsoil use.

A special permit for the use of oil- and gas-bearing subsoil is a permitting document in the sphere of economic activity and is included in the list of permitting documents set out in the Annex to the Law of Ukraine dated 19 May 2011, No. 3392-VI. The general conditions for granting special permits for subsoil use were analyzed in Section 1 of this manual.

At the same time, pursuant to Article 3-1 of the Subsoil Code of Ukraine, where laws governing the use of oil- and gas-bearing subsoil – particularly the Law of Ukraine «On Oil and Gas» – establish rules different from those set out in the Code, such laws shall prevail.

This section of the manual examines specific aspects of obtaining a special permit for the use of oil- and gas-bearing subsoil, taking into account the provisions of the Law of Ukraine «On Oil and Gas», which establishes the basic organizational and legal framework of the oil and gas sector and regulates relations related to the use of oil- and gas-bearing subsoil, extraction, transportation, storage, and use of oil, gas, and their processed products.

The procedure for granting a special permit for the use of oil- and gas-bearing subsoil is established in Article 14 of the Law of Ukraine «On Oil and Gas», which provides that such permits are granted to winners of auctions (electronic bidding) by the State Service of Geology and Subsoil of Ukraine, under the conditions provided for in the Subsoil Code of Ukraine.

Furthermore, the procedure for conducting auctions (electronic bidding) for the sale of special permits for subsoil use is established by Resolution of the Cabinet of Ministers of Ukraine dated 23 September 2020, No. 993, while the procedure for granting special permits for the use of oil- and gas-bearing subsoil is governed by the Subsoil Code of Ukraine.

The competition for obtaining a special permit for the use of oil- and gas-bearing subsoil is conducted in accordance with Procedure No. 993 adopted by the Cabinet of Ministers of Ukraine. With its adoption, general conditions for conducting auctions for the sale of special permits within the territory of Ukraine, its continental shelf, and exclusive (maritime) economic zone, including oil- and gas-bearing subsoil, were established.

According to Article 11 of the Law of Ukraine «On Oil and Gas», a special permit for the use of oil- and gas-bearing subsoil must contain the following information:

- information on the holder of the special permit and the type of work for which it is issued;
- definition of the boundaries of the oil- and gas-bearing subsoil plot granted for use;
- validity period of the special permit;
- a list of mandatory annexes, including the agreement on subsoil use conditions.

Unlike the general types of subsoil use defined in Article 14 of the Subsoil Code of Ukraine, *the following types of special permits may be granted specifically for oil- and gas-bearing subsoil:*

- 1) for geological exploration of oil- and gas-bearing subsoil, including pilot industrial development with subsequent extraction (commercial development of deposits);
- 2) for extraction of oil and gas (commercial development of deposits);

3) for construction and operation of underground structures not related to mineral extraction, including underground storage facilities for oil or gas and facilities for disposal of waste from the oil and gas industry and associated water.

The granting of special permits for the creation and use of underground storage facilities for oil, gas, and their processed products is carried out on the basis of a feasibility study justifying their establishment (Article 21 of the Law of Ukraine «On Oil and Gas»).

Article 14 of the Law of Ukraine «On Oil and Gas» establishes the specifics of the transfer of the right to use oil- and gas-bearing subsoil, which became possible as of March 2023.

Accordingly, a user of oil- and gas-bearing subsoil holding a special permit may fully or partially transfer the subsoil use rights granted under such permit to another legal entity or individual entrepreneur.

The transfer of subsoil use rights may be carried out in the following ways:

- conclusion of a sale and purchase agreement for such rights;
- contribution of such rights to the authorized capital of a business entity;
- contribution of subsoil use rights granted under a special permit as a contribution to joint activity.

At the same time, the law establishes a mandatory condition for such transfer: the acquiring legal entity, individual entrepreneur, or business entity must not be subject to the restrictions set out in Parts 3–6 of Article 13 of the Subsoil Code of Ukraine.

According to these provisions, the following may not act as subsoil users:

- 1) legal entities registered in a state recognized by the Verkhovna Rada of Ukraine as an aggressor state;
- 2) legal entities in which – a significant participation is held by such a state or by entities registered in such a state; or – the ultimate beneficial owners are individuals who are citizens and/or residents of an aggressor state;
- 3) individuals who are citizens and/or residents of an aggressor state;
- 4) associations of the above-mentioned legal entities.

The right to use subsoil, including the right to use subsoil under production sharing agreements shall not be granted either, and the validity period of special permits for subsoil use shall not be extended:

- where a legal entity, individual entrepreneur, or association of legal entities is subject to special economic or other restrictive measures (sanctions) under the Law of Ukraine «On Sanctions», including cancellation or suspension of special permits (for the duration of such sanctions);
- where such sanctions are applied to the ultimate beneficial owners of a legal entity.

The transfer of the right to use oil- and gas-bearing subsoil may be carried out only after completion of the following actions:

- division of reserves (resources) between subsoil plots of a previously explored deposit for which the subsoil user has been granted rights;
- approval of such divided reserves (resources) by the State Commission of Ukraine on Mineral Reserves;
- amendment of the special permit as a result of such division;
- issuance of a separate special permit for the allocated subsoil plot in accordance with the Subsoil Code of Ukraine.

A business entity of the public sector of the economy, as well as an enterprise, a business partnership, in the authorized capital of which 50 or more percent of the shares (shares) belong to an enterprise or a business partnership, in the authorized capital of which there is a share of the state (hereinafter referred to as the business entity), has the right to alienate the rights to use subsoil granted to it by a special permit for the use of oil and gas-bearing subsoil, to make them as a contribution to the authorized capital or as a contribution to joint activities exclusively to such legal entities (Part 3 of Article 14 of the Law of Ukraine «On Oil and Gas»):

- a legal entity, the state's share in the authorized capital of which is 100 percent;
- a legal entity, in the authorized capital of which 50 or more percent of the shares (shares) belong to an enterprise or a business partnership, the state's share in the authorized capital of which is 100 percent.

However, such a business entity has the right to transfer the rights to use subsoil granted to it by a special permit for the use of oil- and

gas-bearing subsoil to an individual entrepreneur or a legal entity not specified in Part 3 of Article 14 of the Law of Ukraine «On Oil and Gas» exclusively by decision of the Cabinet of Ministers of Ukraine.

For the acquisition of the right to use oil- and gas-bearing subsoil, a person with whom the holder of the special permit for the use of oil- and gas-bearing subsoil has concluded a sale and purchase agreement for the respective subsoil use rights, or a person to whose authorized capital the right to use oil- and gas-bearing subsoil has been contributed as a contribution, shall apply to the State Service of Geology and Subsoil with an application for making changes to such special permit.

It is important that a user of oil- and gas-bearing subsoil who has transferred the rights to use subsoil (on the basis of a sale and purchase agreement or contribution to the authorized capital) continues to have the rights and obligations of a user of oil- and gas-bearing subsoil under the relevant special permit in full until the State Service of Geology and Subsoil introduces the relevant amendments to such special permit for the use of oil- and gas-bearing subsoil.

The respective rights and obligations, in particular with regard to carrying out planned activity on the basis of an existing Environmental Impact Assessment (EIA) conclusion and/or a decision on planned activity, shall in full pass to the acquirer of the subsoil use rights from the date of amendment provided for by the Subsoil Code of Ukraine to such special permit for the use of oil- and gas-bearing subsoil, with simultaneous entry of the relevant information into the State Register of Special Permits for Subsoil Use.

A user of oil- and gas-bearing subsoil who has contributed the rights to use oil- and gas-bearing subsoil as a contribution to joint activity continues to have the rights and obligations of a subsoil user under the relevant special permit for the use of oil- and gas-bearing subsoil in full.

The granting of special permits for the extraction of oil and gas (commercial development of deposits) is carried out taking into account the results of the Environmental Impact Assessment, which is conducted after obtaining the special permit.

Validity periods for granting special permits for the use of oil- and gas-bearing subsoil:

– *for extraction of oil and gas (commercial development of deposits) on land* – for not more than 20 years; on the continental shelf and within the exclusive (maritime) economic zone of Ukraine – for not more than 30 years;

– *for geological exploration of oil- and gas-bearing subsoil with subsequent commercial development of discovered deposits* – for a period covering the validity of separate special permits for geological exploration of oil- and gas-bearing subsoil and for extraction of oil and gas (commercial development of deposits), but not exceeding: on land – 20 years; on the continental shelf and within the exclusive (maritime) economic zone of Ukraine – 30 years;

– *for construction and operation of underground storage facilities for oil or gas* – for not more than 50 years.

In addition, a user of oil- and gas-bearing subsoil who has duly complied with the requirements and conditions provided for by the special permit for the use of oil- and gas-bearing subsoil and the agreement on the use of oil- and gas-bearing subsoil has the right to an extension of the validity period of such permit.

Upon expiration of the validity period of the special permit for the use of oil- and gas-bearing subsoil, state property that was granted for use to the holder of this permit shall be returned to the state.

Oil and gas extracted by the user of oil- and gas-bearing subsoil and returned into the subsoil for storage, technological purposes, or prevention of their destruction shall belong to the user of oil- and gas-bearing subsoil, as established by Article 10 of the Law of Ukraine «On Oil and Gas».

Extraction of mineralized groundwater unsuitable for domestic use for the needs of the oil and gas industry, as well as disposal of associated and produced water into oil- and gas-bearing formations and formations saturated with mineralized water unsuitable for economic and domestic use, within the boundaries of this subsoil plot shall be carried out by users of oil- and gas-bearing subsoil without a special water use permit.

Suitability of mineralized groundwater for domestic and economic use shall be determined by the central executive authority implementing state policy in the field of food safety and certain quality indicators of food products.

A user of oil- and gas-bearing subsoil holding a special permit for extraction of oil and gas has the right to carry out prospecting and exploration of new oil and gas accumulations within the boundaries of the subsoil plot granted to it.

A user of oil- and gas-bearing subsoil holding a special permit for creation and use of underground storage facilities for gas, oil, and products of their processing may, without concluding an additional agreement, carry out additional geological exploration (further exploration) of objects in which underground storage facilities are planned to be created within the granted subsoil plot.

Specifics of granting special permits for the use of oil- and gas-bearing subsoil within territorial waters and the exclusive (maritime) economic zone of Ukraine.

On subsoil plots of oil- and gas-bearing subsoil located within the territorial waters and the exclusive (maritime) economic zone of Ukraine, for which a special permit has been obtained, the conduct of works shall be carried out in accordance with a special regime established by the holder of the special permit in agreement with the Administration of the State Border Guard Service of Ukraine, the Maritime Administration, and the Ministry of Economy.

Granting for use of oil- and gas-bearing subsoil within the exclusive (maritime) economic zone of Ukraine shall be carried out with due regard to the legal regime of maritime spaces.

Obtaining a special permit for the use of a subsoil plot of oil- and gas-bearing subsoil located within territorial waters or the exclusive (maritime) economic zone of Ukraine shall mean simultaneous acquisition of the right to use the water area within the boundaries of this plot for carrying out works provided for by the special permit for the use of oil- and gas-bearing subsoil. In the event of impossibility to place the relevant technological structures for the use of oil- and gas-bearing subsoil within the water area of the subsoil plot, such structures shall be placed in the water area outside the boundaries of the subsoil plot. Placement of any technological structures for the use of oil- and gas-bearing subsoil throughout the entire validity period of the special permit within territorial waters and the exclusive (maritime) economic zone of Ukraine shall be agreed with the Administration of the State

Border Guard Service of Ukraine, the Maritime Administration, and the Ministry of Economy.

The Law dated 01 December 2022, No. 2805-IX supplemented the Subsoil Code of Ukraine with Section X «Transitional Provisions», which establishes two cases of granting a special permit for the use of oil- and gas-bearing subsoil without conducting an auction (electronic bidding).

First case: for granting a special permit for extraction of oil and gas (commercial development of deposits) – if the holder of a special permit for geological exploration of oil- and gas-bearing subsoil, including pilot industrial development of deposits, on the basis of such special permit (except scientific testing grounds), at its own expense carried out geological exploration of the subsoil plot and evaluation of reserves and resources of mineral resources, approved by the State Commission of Ukraine on Mineral Reserves, and submitted documents for obtaining a special permit for extraction of mineral resources of the respective subsoil plot not later than three years after approval of mineral reserves.

Second case: for obtaining a special permit for geological exploration, including pilot industrial development, with subsequent extraction of oil and gas (commercial development of deposits) – if holders of special permits for geological exploration of oil- and gas-bearing subsoil, including pilot industrial development, who at the moment of entry into force of Law No. 2805-IX had not carried out evaluation of reserves and resources approved by the State Commission of Ukraine on Mineral Reserves, provided that the validity of such special permit had been extended no more than once, within six months from the date of expiration of such special permit.

A special permit for the use of oil- and gas-bearing subsoil may be granted under Production Sharing Agreements (PSAs), and the validity of such permit may be suspended or terminated early exclusively by the Cabinet of Ministers of Ukraine, as provided by Article 17 of the Law of Ukraine «On Production Sharing Agreements».

Special permits for the use of oil- and gas-bearing subsoil issued in violation of the established procedure for their obtaining shall be recognized as invalid in an administrative procedure in accordance with the Law of Ukraine «On Administrative Procedure» or in judicial procedure by a court decision.

Suspension of the validity of a special permit for the use of oil- and gas-bearing subsoil shall be carried out by the State Service of Geology and Subsoil, taking into account the requirements of the Law of Ukraine «On Administrative Procedure».

In particular, in the event of causing, as a result of works related to the use of a subsoil plot of oil- and gas-bearing subsoil, direct harm to human life or health or occurrence of significant environmental pollution, the State Service of Geology and Subsoil may apply to an administrative court with a claim for application of a response measure in the form of termination of the validity of the special permit, if such grounds were established as a result of state geological control measures (Part 5, Article 27 of the Law of Ukraine «On Oil and Gas»).

The norm of the Law that grants the controlling authority (the State Service of Geology and Subsoil) the right, and not the obligation, to apply to court with a claim for termination of the validity of the special permit, taking into account violations identified by it, creates corruption risks in the form of choosing a behavioral option («to go to court or not»), and, of course, the key factor here will be the property issue: if the violating company pays, no court application will be filed; if not, the likelihood of court proceedings increases.

Thus, in order to reduce corruption risk and ensure compliance with environmental legislation, it is advisable to impose on the State Service of Geology and Subsoil the obligation to apply to court with a claim for termination of the validity of the special permit in case of detection during inspection of the fact of causing direct harm to human life or health or occurrence of significant environmental pollution.

4

PRELIMINARY PROCEDURE FOR ASSESSING ENVIRONMENTAL RISKS FOR THE ENVIRONMENT AT THE STAGE OF PREPARING A SUBSOIL PLOT FOR AUCTION FOR THE SALE OF A SPECIAL PERMIT AND DEVELOPMENT OF A PSA PROJECT



In Ukraine, natural resources are used under the procedure of general and special use. If general use is carried out free of charge to satisfy essential human needs, then under the procedure of special use natural resources are granted into possession, use, or lease on the basis of special permits for subsoil use, for the use of which a fee is charged.

If we speak about the extractive sector of the economy from the point of view of ensuring compliance with environmental legislation, this sector bears the greatest risks for the environment, and therefore requires effective management of natural resources and the exercise of proper state environmental control.

Starting from July 2025, regulation of relations in the field of protection, use and reproduction of natural resources, as well as their conservation, belongs to the sphere of management of the unified Ministry of Economy, Environment and Agriculture of Ukraine.

One of the root causes of environmental problems in Ukraine is an ineffective system of public administration in the field of environmental protection and use of natural resources, which includes lack of coordination of actions of central and local executive authorities and local self-government bodies.

The main instruments for implementation of state environmental policy should be state regulation in the field of environmental protection, which will make it possible to establish justified restrictions on the use of natural resources and high limitations on environmental pollution.

Thus, management of subsoil must be carried out in such a way as to ensure fulfillment of the legal, economic and social foundations of

organization of environmental protection in the interests of present and future generations.

However, understanding of the problems and the main causes of their occurrence is insufficient, and they require a comprehensive solution, in particular by adopting effective legislative instruments of regulation in this field, as well as ensuring public participation in the formation of state environmental policy.

The Law of Ukraine «On the Basic Principles (Strategy) of State Environmental Policy of Ukraine until 2030» establishes strategic goals and objectives, among which is ensuring sustainable development of the natural resource potential of Ukraine through transformation of the subsoil use sector into a maximally transparent and investment-attractive industry that meets best international standards. However, since this Strategy was adopted on 28.02.2019, that is, before the full-scale invasion of the Russian Federation into the territory of Ukraine, its provisions do not correspond to the current situation in Ukraine. Infliction of large-scale damage to the environment as a result of armed aggression, destruction of entire ecosystems, has generally worsened the environmental situation in the state; therefore, the Strategy requires updating, taking into account the long-term period for environmental recovery, as well as taking into account the current policy of intensive use of natural resources in the context of partnership between Ukraine and the United States.

Current environmental norms regarding the use of natural resources, compliance with which is an obligation for citizens and enterprises, are established by Article 40 of the Law of Ukraine «On Environmental Protection», and include:

- rational and economical use of natural resources on the basis of wide application of the latest technologies;
- implementation of measures to prevent damage, pollution, depletion of natural resources, negative impact on the state of the environment;
- implementation of measures for reproduction of renewable natural resources;
- application of biological, chemical and other methods for improving the quality of natural resources that ensure environmental protection and safety of public health;

- preservation of territories and objects of the nature reserve fund, as well as other territories subject to special protection;
- conduct of economic and other activity without violation of environmental rights of other persons;
- implementation of measures for conservation and non-depletive use of biodiversity during carrying out activities related to handling of genetically modified organisms.

It is legislatively established that the right to use subsoil shall be terminated on the following grounds (Article 26 of the Subsoil Code of Ukraine):

- expiration of the established term of subsoil use;
- making amendments to the special permit for subsoil use in connection with transfer of subsoil use rights through conclusion of a sale and purchase agreement;
- contribution of such rights as a contribution to the authorized capital of business entities;
- cancellation of the special permit for subsoil use.

Taking into account mandatory environmental norms for the use of natural resources and the established obligations of the subsoil user to ensure safety of people and the environment, in the event of causing, as a result of works related to use of a subsoil plot, direct harm to life or health of people or occurrence of significant environmental pollution, this constitutes grounds for termination of the validity of the special permit for subsoil use. Under such circumstances, the validity of the special permit shall be terminated exclusively by a court (Part 2, Article 26 of the Subsoil Code of Ukraine).

Also, taking into account that court proceedings regarding termination of the validity of a special permit for subsoil use may last for years, and courts are not always willing to side with environmental defenders and citizens who protect their right to a safe environment, such an instrument of protection of environmental rights is ineffective. Therefore, it is important here to ensure proper assessment of environmental risks even before issuance of such a special permit.

Part 11 of Article 16 of the Subsoil Code of Ukraine grants the Ministry of Economy discretionary powers to approve subsoil plots proposed for auction (electronic bidding) for the purposes of granting a special permit for geological exploration, including pilot industrial development of

mineral resources with subsequent extraction (commercial development of deposits).

The Ministry of Economy, within 15 days from the date of receipt of a request from the permitting authority, together with approval, *indicates the conditions under which subsoil use is possible on the proposed subsoil plots (environmental conditions of subsoil use)*.

Refusal to grant approval shall be provided in the presence of substantiated comments regarding the impossibility of subsoil use on the proposed subsoil plot with compliance with the requirements of environmental protection legislation. The refusal shall also indicate ways of eliminating such issues.

Such approvals and comments shall be published on the official website of the Ministry of Economy within three working days after adoption of the relevant decision. In the case of repeated approval, provision of refusal on grounds not indicated in the comments shall not be permitted (except in cases of non-elimination of the causes that served as grounds for the previous refusal).

At first glance, this instrument may seem effective, however there exists an important nuance – the «silent consent principle». It means that if the Ministry of Economy within 15 days from the date of receipt of the request does not provide approval or refusal regarding the proposed subsoil plot, it shall be considered that approval for its putting up for auction (electronic bidding) has been granted.

The possibility of application of the silent consent principle in this procedure makes it ineffective and in essence declarative, which is not intended to protect valuable natural territories and the environment as a whole.

Paragraph 35 of the Resolution of the Cabinet of Ministers of Ukraine «On approval of the Procedure for conducting auctions (electronic bidding) for the sale of a special permit for subsoil use» defines *the list of grounds for withdrawal of a lot from sale by the State Service of Geology and Subsoil, which are:*

- existence of a court decision that has entered into legal force;
- recognition, within the established legislative procedure, of actions and/or cancellation of decisions of the Ministry of Economy regarding approvals for determining the list of subsoil plots, permits for the use of which are put up for auction for granting a special permit for geological

exploration, including pilot industrial development, of mineral resources with subsequent extraction of mineral resources (commercial development of deposits);

- change of the type of subsoil use defined by legislative acts.

In the absence of a decision on approval and application of the silent consent principle, interested public is deprived of the possibility to challenge it and, accordingly, to achieve withdrawal of the subsoil plot from bidding.

However, the Law does not define requirements that must be contained in the conditions provided by the Ministry of Economy regarding compliance with environmental protection legislation under which subsoil use is possible. This creates grounds for abuse – provision of unsubstantiated approvals without taking into account real characteristics of the subsoil plot put up for auction, in particular the presence within the territory of the special permit of protected zones of objects of the nature reserve fund, coastal protection strips and other objects that complicate its use.

We provide a list of valuable natural territories, the verification of the presence of which must obligatorily be carried out by the Ministry of Economy at the stage of approval of a subsoil plot for putting up for auction for sale of a special permit:

- territories of nature reserves, national parks, sanctuaries, other natural territories and objects that are objects of the nature reserve fund, on which any economic and other activity is prohibited, namely: geological exploration works, development of mineral resources, disturbance of soil cover and hydrological and hydrochemical regimes, destruction of geological outcrops that lead to disturbance of natural complexes (Article 16 of the Law of Ukraine «On the Nature Reserve Fund of Ukraine»);

- territories on which rare species of flora and fauna that are subject to special protection and included in the Red Book of Ukraine are present (grow) (Article 10 of the Law of Ukraine «On the Red Book of Ukraine»);

- territories of the Emerald Network that are important for conservation of nature; this network is created in implementation of the Bern Convention on the Conservation of European Wildlife and Natural Habitats;

- territories of wetlands of international importance, mainly as habitats of waterfowl, obligations for conservation of which are established by the Ramsar Convention;
- natural territories that are under protection of the UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage.

Resolution of the Cabinet of Ministers of Ukraine dated 23.09.2020, No. 993 does not contain a direct indication on mandatory verification of subsoil plots regarding their belonging to territories of the nature reserve fund. However, such an obligation follows from the above-mentioned laws and international treaties.

A mandatory Environmental Impact Assessment procedure is stipulated for granting subsoil plots for use if such use is related to carrying out activity defined by the Law of Ukraine «On Environmental Impact Assessment».

The Law of Ukraine «On Environmental Impact Assessment» divides types of planned activity and objects that may have significant impact on the environment and are subject to Environmental Impact Assessment into two categories, among which there are types of activity in the extractive sector:

First category:

- extraction of oil and natural gas on the continental shelf;
- quarries and extraction of mineral resources by open method, their processing or enrichment on site on an area exceeding 25 hectares, or extraction of peat on an area exceeding 150 hectares.

Second category:

- extraction of mineral resources, except mineral resources of local significance extracted by landowners or land users within the boundaries of land plots granted to them for their intended use;
- processing of mineral resources, including enrichment.

Thus, Environmental Impact Assessment of planned activity in the extractive sector that belongs to the first or second category (for example – a special permit for extraction of mineral resources on subsoil plots for which geological exploration has been carried out and reserves have been approved) is carried out directly after obtaining by a business entity of a special permit obtained either as a result of auction or without it, but before adoption of a decision on carrying out planned activity

(for example – obtaining a permit for execution of construction works) (Article 3 of the Law of Ukraine «On Environmental Impact Assessment»).

However, conducting the Environmental Impact Assessment procedure after issuance of the special permit and issuance of conditions for subsoil use does not comply with the principles of environmental protection legislation, since the current legislation lacks a legal norm regarding annulment of a special permit on the basis of obtaining a refusal to issue an EIA conclusion, that is, under such conditions any legal grounds for annulment of the permit for subsoil use are absent.

And although the Subsoil Code of Ukraine (Article 26) provides such a ground for annulment of a special permit as causing, as a result of works related to the use of a subsoil plot, direct harm to life or health of people or occurrence of *significant environmental pollution*, this norm is not preventive, that is, it does not contribute to prevention of occurrence of negative consequences for the environment in the process of carrying out activity, which must be assessed already at the stage of conducting the EIA.

It is precisely the obligation of central executive authorities to carry out technical and other measures to prevent harmful impact of economic and other activity on the environment, thus ensuring environmental rights of citizens (Article 10 of the Law of Ukraine «On Environmental Protection»).

Thus, conducting the Environmental Impact Assessment procedure after issuance of a special permit for subsoil use and issuance of conditions for subsoil use does not comply with the principles of environmental protection legislation.

Under such conditions, state management in the field of use and protection of subsoil is not carried out properly, since prior to issuance of a special permit for subsoil use the EIA procedure is not conducted; at the same time only the powers of the Ministry of Economy to approve subsoil plots proposed for auction are provided, moreover, if a special permit is granted without auction, such approvals are not required at all; in case of transfer of subsoil use rights to another person, amendments to the EIA conclusion are not made.

It is worth adding that recently the State Scientific and Production Enterprise «State Information Geological Fund of Ukraine» (GeoInform

Ukraine) has introduced a new service for the subsoil use market: «Conducting pre-project monitoring of a subsoil plot proposed for obtaining a special permit for subsoil use through an electronic auction»⁴. The respective service is provided on a contractual and paid basis at the request of a potential investor interested in purchasing a special permit for subsoil use.

List of control questions verified during provision of this pre-project monitoring service of a subsoil plot:

- compliance of the quality of the mineral resource of the subsoil use object, determined in the protocol of approval of reserves, with modern technological requirements;
- presence within the territory of the special permit for subsoil use of protection zones of objects of the nature reserve fund, defined in Articles 39, 40 of the Law of Ukraine «On the Nature Reserve Fund of Ukraine»;
- presence of coastal protective strips along river banks and around water bodies within the boundaries of the subsoil plot in accordance with Article 88 of the Water Code of Ukraine;
- presence nearby of sources of technogenic pollution, in combination with which the technogenic load of the subsoil use object will exceed permissible norms;
- presence of sanitary protection zones of water bodies in areas of water intake for centralized water supply of the population, medical and health purposes in accordance with Resolution of the Cabinet of Ministers of Ukraine dated 18.12.1998 No. 2024 «On the legal regime of sanitary protection zones of water bodies»;
- presence of sanitary protection zones established for settlements in accordance with Annex No. 4 to the State sanitary norms and rules of planning and development of settlements approved by Order of the Ministry of Health of Ukraine dated 19.06.96 No. 173;
- presence of protection zones of cultural heritage objects established in accordance with Part 2 Article 54 of the Land Code of Ukraine, Article 32 of the Law of Ukraine «On Protection of Cultural Heritage»;
- presence within the territory of the special permit for subsoil use of species of flora and fauna subject to special protection and included in

⁴ <https://geoinf.kiev.ua/wp/index.html>

the Red Book of Ukraine, which requires actions provided by Article 10 of the Law of Ukraine «On the Red Book of Ukraine».

The cost of the respective service starts from UAH 59,802 (as of December 2025). As a result of provision of the service, the customer receives information on factors that may significantly limit or make impossible subsoil use within the boundaries of the special permit proposed for acquisition through auction.

The service is performed through analysis of data available at the State Scientific and Production Enterprise «GeoInform Ukraine» and data available in open sources regarding the presence within the territory of the future special permit of factors that limit or make impossible subsoil use.

It is noteworthy that the State Scientific and Production Enterprise «GeoInform Ukraine» is a state enterprise, the owner and founder of which is the State Service of Geology and Subsoil. That is, the State Service of Geology and Subsoil, as an authority implementing state policy in the field of geological exploration and rational use of subsoil, understanding shortcomings and gaps of the current legislation regarding verification of a subsoil plot in terms of compliance with environmental protection legislation before conducting an auction, offers such a service on a commercial basis and with consent of a potential investor, rather than for the purposes of environmental protection. Thus, instead of ensuring environmental safety and monitoring of subsoil, the State Service of Geology and Subsoil is engaged in obvious commercialization of this issue.

Thus, extractive activity under any conditions may have a significant negative impact on the environment and risks of occurrence of emergency situations, which is connected with carrying out complex mining-geological, technical, technological and other processes; therefore, environmental risks must be assessed BEFORE putting a subsoil plot up for auction and before issuing to business entities a special permit for subsoil use, since already in the process of conducting the Environmental Impact Assessment and preparation of the EIA report it may be established that carrying out such activity will be impossible, and such an entity will be refused issuance of an EIA conclusion and issuance of a decision on carrying out planned activity.

SPECIFICS OF GRANTING SUBSOIL USE RIGHTS UNDER PRODUCTION SHARING AGREEMENTS. CORRUPTION RISKS WITHIN THE PSA MECHANISM



Conclusion of a Production Sharing Agreement is a specific type of subsoil use. The procedure for their conclusion is regulated by the Law of Ukraine «On Production Sharing Agreements». Distinctive features of this instrument are creation of favorable conditions for the investor and provision of guarantees of stability of legislative norms.

According to the Law «On Production Sharing Agreements» dated 14.09.1999, No. 1039-XIV, a Production Sharing Agreement (hereinafter – PSA) is an agreement under which the state entrusts to the investor for a defined period the carrying out of prospecting, exploration and extraction of mineral resources on a defined subsoil plot (plots) and performance of works related to the agreement, and the investor undertakes to perform the entrusted works at its own expense and at its own risk with subsequent compensation of costs and receipt of remuneration in the form of a part of profit production. Investors may be legal entities and individuals registered in Ukraine and abroad. PSAs may be concluded in bilateral and multilateral formats.

The state in PSAs, in accordance with the mentioned Law, is represented by the Cabinet of Ministers of Ukraine, which creates and approves the composition of a special Interdepartmental Commission. The composition of the commission includes representatives of state authorities, local self-government bodies and Members of Parliament of Ukraine. The Interdepartmental Commission submits to the Cabinet of Ministers for approval the conditions of the competition, announces, organizes and conducts it.

It is noteworthy that a PSA may also be concluded without conducting a competition by decision of the Government if the subsoil plot contains insignificant reserves of mineral resources or if the subsoil user already holds a special permit for subsoil use or several special permits.

However, the Government does not represent the state in PSAs alone. On 29 April 2022, the Cabinet of Ministers of Ukraine by Decision No. 332-p approved the subsidiary company «Gas of Ukraine» of the joint-stock company «Naftogaz of Ukraine» as authorized to carry out all actions with hydrocarbons in the event of withdrawal of the share of profit hydrocarbons belonging to the state of Ukraine in kind within the framework of execution of concluded agreements on sharing of hydrocarbons. Thus, on behalf of the state, its share in PSAs is managed by a company of «Naftogaz of Ukraine».

The Cabinet of Ministers also approved by Resolution dated 09 February 2024, No. 169 «Certain issues of use (sale) of a part of produced products remaining in state ownership in accordance with a Production Sharing Agreement (natural gas)» the Procedure for use (sale) of such products.

According to this Procedure, «Gas of Ukraine» shall sell the state share of produced products in accordance with exchange trading regulations on the short-term natural gas market using an exchange trading platform and transfer the monetary equivalent from such sale to the state and local budgets. Distribution between state and local budgets is carried out in accordance with the Budget Code of Ukraine. The Government also declared invalid the previous procedure approved by Resolution of the Cabinet of Ministers of Ukraine dated 28 April 2000, No. 741 and obliged the State Service of Geology and Subsoil to conduct a comprehensive inspection and sign an act on compliance of shares of produced products that were produced before entry into force of the new Procedure. A procedure for distribution of a part of production for liquid hydrocarbons or other types of mineral resources has not been developed as of today, although the Law does not limit the scope of application of PSAs exclusively to natural gas or hydrocarbons.

As of December 2025, the following Production Sharing Agreements have been concluded in Ukraine:

1. Prykerchenska plot, year of conclusion of PSA: 2007, contractor: «Vanco Prykerchenska Ltd». The owners of the company with equal share participation are Vanco International, DTEK Holdings Limited of Ukrainian businessman Rinat Akhmetov, and Shadowlight Investments Limited of Russian businessman Yevgeny Novitsky, as well as the Austrian company Integrum Technologies Limited. Due to the significant distance (13 km) of the plot from the coastline of the Kerch Peninsula and territories controlled by Ukraine, the project is frozen.
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2. Oleska plot, year of conclusion of PSA: 2013, contractors: Chevron, «Nadra Oleska» LLC. Chevron officially informed the Government of Ukraine of its decision to withdraw from the PSA within the Oleska plot unilaterally⁵. By the Order of the Cabinet of Ministers of Ukraine dated 04 April 2025 No. 304-p, amendments to the Agreement on sharing of hydrocarbons to be extracted within the Oleska plot dated 05 November 2013 were approved, and consent was granted for transfer of 100 percent of rights and obligations of «Nadra Oleska» LLC in favor of PJSC «Ukrnafta». Thus, instead of «Nadra Oleska» LLC, implementation of the PSA for extracted hydrocarbons on the Oleska plot in Lviv and Ivano-Frankivsk regions will be carried out by PJSC «Ukrnafta».

3. Yuzivska plot, year of conclusion of PSA: 2013, contractors: «Nadra Yuzivska» LLC (previously Shell Exploration and Production Ukraine Investments (IV) B.V. (Shell) and «Nadra Yuzivska» LLC, Yuzgaz B.V. and Nafta a.s.). In 2014, Shell stated that it had not achieved the desired progress in exploration of the deposit due to hostilities in Donbas, and in September 2015 withdrew from the PSA. In July 2016, the Dutch company Yuzgaz B.V. became the winner of a new PSA competition for the Yuzivska area. In December 2018, the Government transferred 90% of rights and obligations of «Nadra Yuzivska» LLC to Yuzgaz with the project investor-operator represented by Slovak company Nafta a.s. In December 2019, the Head of the State Service of Geology and Subsoil Roman Opimakh reported that Slovak Nafta a.s., owned by EPH Group, withdrew from participation in the project, but later EPH reported retention of interest in development of the area. Later, NJSC «Naftogaz of Ukraine» acquired shares in «Nadra Yuzivska» LLC.

4. Complex of plots – Abikha, Kavkazka, Mayachna, Subbotina on the shelf of the Black Sea, year of conclusion of PSA: 2013. Contractors: ENI Ukraine Shallow Waters B.V., EDF Shallow Waters SAS, «Vody Ukrainy» LLC, JSC «DAT «Chornomornaftogaz»». The plots are located near the Kerch Peninsula, therefore the project was frozen due to annexation of Crimea. The illegally created Russian state enterprise «Chernomorneftegaz» seized assets of the Ukrainian JSC «DAT «Chornomornaftogaz»» and continues development of the plots.

5. Balakliiska, Berestyanska, Buzivska and Ivanivska plots. Five PSAs for each plot were concluded on 31.12.2020. Contractor: JSC «Ukrgezvydobuvannia». Information on their implementation is closed. According to NADRA.INFO, Deputy Minister of Energy M. Kolisnyk noted⁶ that work on implementation of the PSA is being carried out on the Ivanivska plot.

⁵ chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://dostup.org.ua/request/48279/response/225161/attach/4/attachment.pdf?cookie_passthrough=1

⁶ <https://nadra.info/2024/06/mykola-kolisnyk-two-psas-are-being-implemented-and-have-given-ukraine-more-than-100-million-cubic-meters-of-hydrocarbons/>

6. Sofiivska plot, PSA concluded on 31.12.2020, contractor: Geo Alliance Partnership B.V. Information on its implementation is closed. Uhnivska plot, PSA concluded on 31.12.2020, contractor: Well Co LLC. According to NADRA.INFO, Deputy Minister of Energy Mykola Kolisnyk noted that implementation of the PSA on the Uhnivska plot has been ongoing⁷ Since spring 2022. In 2022-2024, UAH 1,926,000 of rent payments were received into budgets in Lviv region within the framework of the PSA⁸. According to the notification of planned activity within the framework of the Environmental Impact Assessment, Well Co LLC plans to drill⁹ two exploratory wells on the plot in Sambir district. No other information on implementation of this PSA is available.

7. Zinkivska plot, PSA concluded on 31.12.2020, contractors: Oil & Gas Overseas Trading B.V. and «Naftogazekspluatatsiia» LLC. Information on implementation of the PSA is not available.

8. Varvynska plot, PSA concluded on 14.01.2021, contractor: Ukrainian Energy L.L.C. Information on implementation of the PSA is absent.

9. Okhtyrska and Hrunivska plots, two PSAs concluded on 08.11.2021, contractor: ER Ukraine B.V. Information on implementation of the PSA is absent.

10. Ichnianska plot, PSA concluded on 08.11.2021, contractor: York Energy (UK) Holdings Limited. In April 2023, it was reported¹⁰ that more than 100 subsoil users applied to the State Service of Geology and Subsoil regarding the occurrence of force majeure circumstances; among them were contractors of 11 hydrocarbon PSAs, which are currently suspended¹¹.

As of today, it is also known that in 2024 Ukraine received from PSAs the first part of profit production¹² due to it (UAH 11.5 million to the general fund of the state budget and UAH 1.3 million to local budgets), and that during the period from September 2024 to January 2025 the

⁷ The same as above.

⁸ <https://nadra.info/2024/03/rent-from-psa-in-two-years-the-ugnivska-site-provided-the-budgets-of-the-lviv-oblast-with-about-uah-2-million-in-rent/>

⁹ <https://strilky-gromada.gov.ua/ogoloshennya/povidomlennya-pro-planovanu-diyalnist-yaka-pidlyagaye-oczinczi-vplyvu-na-dovkillya-tov-vell-ko/>

¹⁰ <https://www.geo.gov.ua/roman-opimakh-vziav-uchast-u-efiri-telemarafonu-suspilne-sprotyv/>

¹¹ <https://gmk.center.ua/interview/roman-opimah-vid-pochatku-vijni-mi-vidali-61-specdozvil-shhodo-korisnih-kopalin/>

¹² <https://nadra.info/2024/08/ministry-of-finance-in-2024-the-state-received-the-first-profits-from-the-psa/>

State Service of Geology and Subsoil of Ukraine plans¹³ to verify the cost component of PSAs within the Balakliiska, Buzivska, Berestyanska, Ivanivska, Uhnivska and Yuzivska plots (according to NADRA.info).

This concerns verification of correctness of determination of investor costs subject to compensation by the state within execution of PSAs. The existence of costs planned for verification indicates potential works on the respective plots.

In February 2022, the Interdepartmental Commission on organization of conclusion and execution of Production Sharing Agreements considered the first application for a competition for a lithium PSA¹⁴, and this consideration was rather resonant, since the potential PSA contractor (Privateer Capital Management LP, Delaware, USA) was absent at the meeting. However, several days later the full-scale war of the Russian Federation against Ukraine began, therefore further consideration of the issue was suspended.

A year later, the Government approved the List of subsoil plots (mineral deposits) that have strategic significance for sustainable development of the economy and defense capability of the state, which will be granted for use through conducting competitions for conclusion of Production Sharing Agreements, by adopting Resolution dated 14 February 2023, No. 132, which remained in force until 14 July 2025. The specified list included the «Dobra» lithium ore plot located in Kirovohrad region.

The «Dobra» plot contains deposits of petalite ores with a high lithium content, ranging from 3-4.5%, which makes it a key lithium deposit in Ukraine, and also contains associated mineral resources – tantalum, niobium, rubidium, beryllium, tin, cesium, tungsten, gold – all of which belong to strategic or critical significance in the EU and are included in the list of minerals, new extraction projects of which will fill the U.S. – Ukraine Recovery Fund, the agreement on the establishment of which was signed on 30 April 2025 between the Government of Ukraine and the Government of the United States.

On 16 June 2025, the Interdepartmental Commission on organization of conclusion and execution of Production Sharing Agreements (PSAs),

¹³ <https://nadra.info/2024/08/sources-state-geological-survey-derzhgeonadra-will-check-the-expenses-of-six-psa/>

¹⁴ <https://nadra.info/2022/02/the-interdepartmental-commission-considered-the-first-application-for-the-competition-for-lithium-psa/>

at its meeting, adopted a decision on the expediency of announcing a competition for the lithium plot «Dobra» in Kirovohrad region.

On 27 August 2025, the Cabinet of Ministers of Ukraine adopted a decision on conducting an open competition for conclusion of a Production Sharing Agreement within the «Dobra» plot (Kirovohrad region) and approved the competition conditions. In particular, the document provides for the possibility of extraction of nine types of mineral resources, including lithium and gold.

According to the PSA conditions, the minimum volume of investments to be carried out by the PSA Investor for performance of geological exploration works is not less than USD 12 million. Minimum investments for organization of extraction and enrichment (primary processing) of lithium-containing minerals and other metallic mineral resources are not less than USD 167 million.

The main criteria for distribution of production, as defined in paragraph 18 of the competition conditions, are as follows: all produced products before distribution between the State and the Investor belong to the State. The maximum share of compensation production, at the expense of which the Investor's costs will be compensated, constitutes 70% of the total volume of produced products until full reimbursement of the Investor's costs.

The share of the State in profit production must constitute not less than 4% or 6% (depending on whether the reimbursable accounting costs exceed the value of the maximum level of compensation production or vice versa).

On the question of who may potentially obtain the right to develop the lithium ore plot «Dobra», the Financial Times¹⁵ reported in its material that «the Irish company TechMet, which is partially owned by the U.S. Government, has a private interest in development of the “Dobra” plot and plans to participate in the upcoming competition for obtaining a special permit». In September 2025, Deputy Minister of Economy Yehor Perehyin confirmed that an application for conducting a competition for conclusion of a PSA was submitted by TechMet (Dublin, Ireland)¹⁶. The acceptance of applications will continue until 12 December 2025,

¹⁵ <https://www.ft.com/content/bc0c6df8-229c-4ec6-9a27-190961715070>

¹⁶ <https://nadra.info/2025/09/ye-gor-perelygin-nothing-terrible-is-happening-for-the-market/>

after which the winner of the competition will be announced and a PSA will be concluded.

Extractive Industries Transparency Initiative and PSAs

According to the standard¹⁷ of the Extractive Industries Transparency Initiative, to which Ukraine acceded in 2013, Ukraine must disclose, that is, make public, essential terms of extractive contracts, in particular PSAs. According to Article 11 of the Law of Ukraine «On Ensuring Transparency in Extractive Industries», information subject to publication includes:

- name of the contract (agreement), number, date of conclusion, names of the parties;
- date of entry into force and term of validity of the contract (agreement);
- subject of the contract (agreement);
- rights and obligations of the parties regarding subsoil use, other rights to natural resources;
- guarantees regarding stability of legislative norms (if any);
- conditions regarding specifics of collection of payments;
- operational obligations, in particular work programs;
- obligations regarding environmental protection measures;
- requirements regarding safety and labor protection of hired employees, involved contractors and their hired employees;
- social obligations, including provisions on participation in development of local infrastructure and provisions on use of works, goods and services performed, supplied or provided by business entities registered within the territorial community on the territory of which activity in extractive industries is carried out, requirements regarding conduct of public hearings.

The specified information regarding the Buzivska, Berestyanska, Balakliiska, Ivanivska, Zinkivska, Sofiivska, Uhnivska, Hrunivska, Okh-tyrska plots and extracts from Production Sharing Agreements (only Buzivska, Berestyanska, Balakliiska, Ivanivska, Zinkivska, Sofiivska plots) are published¹⁸ on the website of the Ministry of Energy of Ukraine and are available for download.

¹⁷ <https://mev.gov.ua/rubrika/standart-ipvh>

¹⁸ <https://mev.gov.ua/storinka/uhody-pro-rozpodil-produktsiyi>

At the same time, this information cannot be defined as exhaustive or even as such that complies with the EITI standard. For example, experts of DiXi Group analyzed¹⁹ the degree of disclosure of agreements and determined that essential terms are insufficiently disclosed, while the published information contains references to closed annexes or articles.

Environmental Impact Assessment and Production Sharing Agreements

Few topics have been so «demonized» in the media space as Environmental Impact Assessment in subsoil use, in particular in oil and gas extraction. Extractive companies and their business associations reported²⁰ on suspension of extraction and threats to national energy security, complained²¹ about a «non-functioning» EIA procedure, etc.

However, everything occurred exactly the opposite way – during extractive projects (and many of them are of public interest), the requirements of European directives and international conventions regarding conduct of Environmental Impact Assessment were ignored and continue to be ignored. There are specific confirmations of this and decisions of governing bodies of international conventions.

In November 2014, the International Charitable Organization «Environment-People-Law» submitted²² a statement to the Compliance Committee of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (hereinafter – the Aarhus Convention Compliance Committee) regarding violations by Ukraine of the Convention during preparation and conclusion of agreements on sharing of hydrocarbons concerning the Yuzivska and Oleska areas.

Facts of the case:

The State of Ukraine, the company Chevron Ukraine B.V. and «Nadra Oleska» LLC signed a Production Sharing Agreement for extraction of hydrocarbons on the Oleska plot (Lviv and Ivano-Frankivsk regions) in 2013.

¹⁹ https://dixigroup.org/wp-content/uploads/2021/06/analiz_ist_umov_urp.pdf

²⁰ <https://day.kyiv.ua/article/ekonomika/39-rodovyshch-na-mezhi-zupynennya>

²¹ <https://www.ukrinform.ua/rubric-economy/2473602-vidobutok-gazu-pid-zagrozou-ne-pracue-mehanizm-ocinki-vplivu-na-dovkilla.html>

²² <https://epl.org.ua/announces/u-komiteti-iz-dotrymannia-orhuskoi-konventsii-rozpochavsia-rozhliad-spravy-shchodo-uhod-pro-rozpodil-produktsii/>

On 01 August 2013, EPL submitted to the State Service of Geology and Subsoil a request for public information No. 248 with a request to «inform whether a special permit for subsoil use was issued to the company “Shell Exploration and Production Ukraine Investment (IV) B.V.” and “NADRA YUZIVSKA” LLC for execution of the Agreement “On sharing of hydrocarbons to be extracted within the Yuzivska plot between the State of Ukraine and the company “Shell Exploration and Production Ukraine Investment (IV) B.V.” and “NADRA YUZIVSKA” LLC (hereinafter – the Agreement). In the event that such permit was issued, to provide a copy of such permit».

By letter No. 9893/12-13 dated 20.08.2013, the State Service of Geology and Subsoil refused EPL in satisfaction of the request on the basis of paragraph 2 Part 1 Article 22 of the Law of Ukraine «On Access to Public Information». According to the position of the Respondent, the requested information is public information with restricted access and is classified as official information.

EPL considers that the requested information is open, the above interpretation of the provisions of the Law of Ukraine «On Access to Public Information» is erroneous, and the refusal to provide information upon request is unlawful and, accordingly, violates EPL’s right to access to information.

The essence of EPL’s statement to the Aarhus Convention Compliance Committee consisted in the fact that in 2013, during the process of negotiations with investors and signing of the specified Production Sharing Agreements (hereinafter – PSAs), the Government violated environmental rights of citizens of Ukraine, namely:

- the right to familiarization and access to drafts of such agreements, since, despite numerous requests, the texts of the agreements were not provided;
- the right to a safe environment for life and health in connection with failure of the Government to conduct a state environmental expert examination regarding the Yuzivska PSA and formal conduct of such examination regarding the Oleska PSA already after signing of the agreement itself;
- the right to participate in the process of adoption by the Government of such strategically important decisions, since the public was not involved in the processes of coordination and conclusion of such agreements;

- as well as the right to challenge the specified actions and omissions of the Government in court, since Ukrainian courts refused the public the right to challenge PSAs in court.

More detailed information, including the materials of the communication (ACCC/C/2014/118), may be found on the official website of the Convention²³.

Following consideration of case ACCC/C/2014/118 submitted by the International Charitable Organization «Environment-People-Law», on 21 October 2021 the Meeting of the Parties to the Aarhus Convention adopted decision VII/8r, by which it established that Ukraine violated provisions of the Convention, in particular:

- a) by failing to provide, upon request, access to the texts of PSAs for the Yuzivska and Oleska areas;

- b) by failing to ensure public participation in development of PSA drafts for the Yuzivska and Oleska areas;

- c) by approving legal frameworks under which public participation is ensured only after the PSA is at the stage of implementation;

- d) by refusing a non-governmental organization the right to challenge the legality of PSAs;

- e) by failing to ensure disclosure of requested environmental information immediately after a court decision on its disclosure was issued.

The Meeting of the Parties also recommended that Ukraine take necessary legislative, regulatory, administrative or other measures to remedy the situation and, by 01 July 2022, submit an action plan (with a corresponding schedule) for implementation of the recommendations, and by 01 October 2023 submit the first detailed report on progress in implementation of the plan and recommendations. The specified decision is subject to review in 2025.

Immediately after receiving such decision of the Meeting of the Parties, the International Charitable Organization «Environment-People-Law», as well as several other non-governmental organizations in Ukraine, applied²⁴ to holders of public information in possession of copies of the Yuzivska and Oleska agreements. However, the Ministry of

²³ www.unece.org/env/pp/pubcom.html

²⁴ <https://epl.org.ua/environment/a-viz-i-nyni-tam-abo-yak-ukrayina-vykonuye-rishennya-mizhnarodnyh-organiv/>

Economy responded that this issue falls within the competence of the Ministry of Energy, and the Ministry of Energy in turn reported absence of permission for their publication, since «the texts of the agreements are confidential», which, of course, contradicts the provisions of the Aarhus Convention and decisions of its governing bodies regarding Ukraine.

As of today, Ukraine has submitted for consideration to the Secretariat of the Convention a draft action plan²⁵ and a progress report²⁶ (submitted with delay of 2 years and 9 months respectively). The main message of these documents consists in the fact that Ukraine sees implementation of the decision of the Meeting of the Parties in adoption and implementation of the Law of Ukraine «On Amendments to Certain Legislative Acts of Ukraine Regarding Ensuring Transparency in Extractive Industries», according to which all PSAs concluded after entry into force of the mentioned Law (17.12.2021) are published in full, and those agreements concluded before this date – at the level of information on their essential terms (for more details see «Extractive Industries Transparency Initiative and PSAs»).

This legislative act, without doubt, corresponds to the spirit of the Aarhus Convention and has a certain positive impact on transparency of the extractive sector as a whole, but, unfortunately, is not an indicator of full implementation of the decision of the Meeting of the Parties. Since the texts of PSAs for the Oleska and Yuzivska areas remain closed (as concluded before 17.12.2021) and are not provided to the public upon request. Moreover, with regard to these agreements, even information on their essential terms is absent in public access, although this is provided for by the mentioned Law. For implementation of the decision of the Meeting of the Parties, significantly more must be done than reporting by adoption of a Law. It is necessary to ensure public access to the texts of agreements, at least upon request.

In addition, the decision also contained recommendations regarding public participation in processes of conclusion of PSAs and protection of its interests in court, which were also not reflected in the Ukrainian report.

²⁵ chrome-extension://efaidnbmnnnibpcajpglclefndmkaj/https://unece.org/sites/default/files/2024-06/frPartyVII.8r_28.05.2024_draft_plan.pdf

²⁶ chrome-extension://efaidnbmnnnibpcajpglclefndmkaj/https://unece.org/sites/default/files/2024-07/frPartyVII.8r_09.07.2024_progress_report.pdf

Therefore, the Aarhus Convention Compliance Committee determined²⁷ that Ukraine still has not fulfilled the requirements of paragraph 2 (b), (c) and (e), and invited Ukraine to provide the text of all legislative, regulatory, administrative and other measures for implementation of paragraph 2 (a)-(e) of decision VII/8r. Moreover, all measures were to be completed and their results made public not later than 01 October 2024, since this was the last opportunity for Ukraine to demonstrate to the Committee implementation of the recommendations provided in decision VII/8r. This deadline has expired, therefore in 2025 at the next session regarding Ukraine the issue of issuing a warning, and possibly a decision on deprivation of rights and privileges under the Convention, may be considered.

Information on Environmental Impact Assessment under other PSAs

Until 2019, several PSAs were submitted for conducting Environmental Impact Assessment (EIA), some even received EIA conclusions. However, after amendments were introduced to the Law on Production Sharing Agreements in 2019, the EIA procedure is conducted after signing of the PSA, but before the start of implementation of such agreement. Therefore, currently, prior to signing of a PSA, the EIA procedure is not carried out. According to the decision of the Committee, this contradicts the provisions of the Aarhus Convention.

At present, from public sources (the Unified EIA Register and websites of local community authorities), information is available regarding planned activity within the framework of a PSA on the Uhnivska plot, which is being developed by Well Co. LLC. It is known that the contractor of the agreement plans to drill²⁸ two exploratory wells on the plot in Sambir district. No other information regarding implementation of the specified PSA or other PSAs is available.

Indicators of corruption risks in the PSA mechanism

The main risk of the PSA instrument is lack of transparency:

- despite the requirements of international conventions, EU directives, and national legislation, the texts of Production Sharing Agreements are not available in broad access and are not provided to the public upon request;

²⁷ chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://unece.org/sites/default/files/2024-10/VII.8r_Ukraine_first_progress_review_final.pdf

²⁸ <https://strilky-gromada.gov.ua/ogoloshennya/povidomlennya-pro-planovanu-diyalnist-yaka-pidlygaye-oczinczi-vplyvu-na-dovkilliya-tov-vell-ko/>

– the public is not involved in decision-making within the framework of preparation and implementation of PSAs. The only mechanism that the public may use for analysis of environmental impact of activity under PSAs is the EIA procedure. However, due to legislative amendments adopted in 2019, the EIA procedure has been moved far beyond the decision-making process regarding PSAs; therefore, the public in fact cannot influence the question of whether such a project should or should not be implemented, despite the fact that this contradicts the Aarhus Convention. In addition, there is a necessity to amend the legislation and move the EIA procedure to the stage of development of the PSA project. As of today, this issue is particularly relevant, since the «subsoil agreement» concluded between Ukraine and the United States provides for conclusion of new PSAs;

– since the texts of PSAs are closed, it is unknown how implementation of the agreement is proceeding. In public access there is very limited, rather episodic information regarding how exactly PSAs are implemented, how production is distributed, how it is used, what revenues the investor receives, and what revenues are received by the state and local budgets. The available information does not allow for a qualitative analysis of effectiveness of the agreement or its public audit. Against this background, any manifestation of corruption is possible;

– other corruption risks of the procedure include selectivity and weak competition rules. The procedure creates special conditions of implementation for contractors, narrows opportunities for participation for a wide range of participants, while the quality of implementation of the agreement remains questionable;

– contractors under PSAs are granted special conditions in relation to Ukrainian legislation. Thus, according to Article 27 of the Law of Ukraine «On Production Sharing Agreements», the legislation in force at the moment of conclusion of the PSA shall apply to the rights and obligations of the investor throughout the term of the agreement, except for legislation that reduces the amount of taxes or abolishes them, simplifies regulation, weakens procedures of state supervision (control), or mitigates the liability of the investor. Also, the investor is not subject to the effect of regulatory legal acts of executive authorities and local self-government bodies if such acts restrict the rights of the investor. Although these rules contain exceptions related to ensuring defense,

national security, public order, and environmental protection, they still place the investor in a privileged position compared to other market participants. At the same time, the mechanism of conclusion of agreements does not contain guarantees that the privileges of PSAs will be used precisely by those who won;

- the procedure for conclusion of PSAs is not resistant to manipulation during the competition, and the result of the competition does not guarantee the quality of implementation of the agreement. Firstly, a PSA may be concluded without a competition – the Law contains sufficient exceptions from the general rule (paragraph 5, Article 6); for this, it may be sufficient to have an application from a subsoil user or an initiative of the interdepartmental commission. Clear criteria for such an exception are not provided;

- we have already seen instances when the bid was won by foreign investors, while the agreement was implemented by Ukrainian state companies by decision of the Ukrainian Government (Yuzivska plot), or Ukrainian companies entered into a consortium with foreign ones (JSC «Ukrgezvydobuvannya» and Vermilion Energy)²⁹ and subsequently the foreign investor withdrew³⁰ from participation in the agreement, and the sole contractor and, accordingly, the holder of PSA privileges remained a Ukrainian state company. A situation has arisen in which a national extractive company received for use a socially significant natural resource of subsoil (a hydrocarbon deposit) and used it under conditions of confidentiality and with state guarantees against changes in regulation. That is, the state allocated subsoil to itself and guaranteed inviolability and confidentiality.

Despite more than 10 years of war experience, the PSA procedure is not synchronized with the mechanism of imposition of sanctions. Moreover, Ukrainian subsoil granted for use under PSAs and located in occupied territories is «successfully» developed by sanctioned companies. The legislation also does not prohibit re-registration of a sanctioned beneficial owner; therefore, if current PSA contractors fall under sanctions, extraction will likely not cease. It is possible that the validity

²⁹ <https://www.naftogaz.com/news/ukrgazvydobuvannya-ta-kanadska-vermilion-energy-vzyaly-spilnu-uchast-u-4-konkursah-na-ukladannya-ugod-pro-rozpodil-produktsii-v-ukraini>

³⁰ <https://www.epravda.com.ua/news/2020/11/27/668586/>

of the permit will be suspended for some time and only for that subsoil user that has a sanctioned person or persons in the structure of beneficial ownership. For other participants of the consortium (and many PSAs were concluded precisely in consortium form), the validity of permits and PSAs will not be suspended. Subsequently, after removal of sanctioned persons from the beneficial ownership structure, the validity of the suspended special permit will be restored.

In addition, the mechanism of subsoil development under PSA conditions is developing in conditions of serious gaps in legislation, which put under threat both environmental and economic security of the state and local communities.

Taking into account numerous cases of complaints regarding violation of the right to free, prior and informed consent even within the territory of the United States³¹, and the fact that Ukraine, while defending itself from Russian aggression, at the same time depends on both military and diplomatic support from the United States, and also experiences pressure from the President of the United States D. Trump, the confidentiality of subsoil agreements concluded between Ukraine and the United States raises the question of compliance of such agreements with the Constitution of Ukraine, as well as with the principles of Ukrainian and international legislation. Since, if the agreements contain separate political or military provisions related to security issues, they may be set out in separate documents. As for the direct use of natural resources of Ukraine, in accordance with the constitutional principle of guaranteeing human rights and freedoms, in particular the right to an environment safe for life and health, as well as the right of free access to information on the state of the environment and its dissemination (Article 50 of the Constitution of Ukraine), and the right of ownership of the Ukrainian people to natural resources located within the territory of Ukraine (Article 13 of the Constitution of Ukraine), the classification of such agreements directly contradicts the Constitution.

Legal practice of EPL indicates existing cases of violation by Ukraine of both national and international legislation concerning PSAs. In particular, despite the requirements of national legislation, the texts of PSAs are not available in broad access and are not provided to the public upon request.

³¹ US: Lithium Mine Permit Violates Indigenous Peoples' Rights | Human Rights Watch

In addition, the public is not involved in decision-making within the framework of preparation and implementation of PSAs. The only mechanism that may be used by the public for analysis of environmental impact of activities under PSAs is the EIA procedure. However, due to legislative amendments adopted in 2019, the EIA procedure has been moved far beyond the decision-making process regarding PSAs. That is, the public cannot in any way participate in decision-making on whether the project provided for by a PSA will be implemented.

Regarding resource payments and pollution payments, it should be recalled that PSA contractors are granted special, preferential conditions with respect to taxation, control, and liability. In particular, Article 27 of the Law of Ukraine «On Production Sharing Agreements» provides that the legislation in force at the moment of conclusion of the PSA shall apply to the rights and obligations of the investor throughout the term of the agreement, except for legislation that reduces the amount of taxes or abolishes them, simplifies regulation, weakens procedures of state supervision (control), or mitigates the liability of the investor.

Also, the investor is not subject to the effect of regulatory legal acts of executive authorities and local self-government bodies if such acts restrict the rights of the investor. Although these rules contain exceptions related to ensuring defense, national security, public order, and environmental protection, they still place the investor in a privileged position compared to other market participants.

In addition, paragraph 3 of Article 4 of the Law of Ukraine «On Production Sharing Agreements» provides that the state ensures granting to investors (including operators of agreements), as well as to representations of foreign investors, and facilitates granting to their contractors, subcontractors and other organizations (persons), as well as to representations of foreign contractors, subcontractors and other organizations (persons), within the established procedure, of approvals, quotas, special permits for subsoil use and licenses for carrying out activities on prospecting (exploration) and exploitation of mineral deposits, acts on granting a mining allotment, documents certifying the right to use land, and other permits, documents of a permitting nature, licenses related to subsoil use, performance of works, construction of structures provided for by the Production Sharing Agreement.

This provision of the Law directly places subsoil users operating under other conditions in a disadvantageous position compared to users operating under PSA conditions, since in this case the state assumes the passage of bureaucratic permitting procedures. In essence, the principle of equal conditions for conducting extractive activity is violated through application of a «preferential» regime for those entities operating under PSA conditions. This also contradicts the principles of protection by the state of public interests, since under such conditions the state acts not as a protector of public interests, but as a protector of the investor.

A separate impact of subsoil use based on Production Sharing Agreements will be inflicted on the finances of the state and local self-government. Indeed, the current legislation on PSAs violates the principle of payment for special use of natural resources established in Article 3 of the Law of Ukraine «On Environmental Protection».

In particular, Article 335 of the Tax Code of Ukraine, which regulates the procedure of taxation of the investor during execution of a Production Sharing Agreement, provides that the investor pays only three types of taxes:

- a) value added tax;
- b) corporate income tax;
- c) rent payment for subsoil use for extraction of mineral resources.

That is, according to current legislation, investors operating under PSA conditions are not required to pay:

- land fee. Land where extraction of mineral resources, their storage, enrichment, and storage of waste is carried out must belong to industrial land. Land fee is fully credited to the budgets of territorial communities;

- environmental tax. In particular, for emissions of pollutants into atmospheric air, carbon dioxide emissions, discharges of pollutants into water bodies, waste disposal, etc., including waste generation. The tax on carbon dioxide emissions is credited to the State Budget, while taxes on emissions, discharges, and waste disposal are distributed in the proportion of 45% to the State Budget and 55% to local budgets;

- rent payment for special use of water. That is, the investor will not pay for the actual volume of water used by the enterprise.

In essence, as a result of such gaps in legislation, both the State Budget and the budgets of local self-government will annually receive

less billions of hryvnias in the form of respective resource payments and revenues from the environmental tax. In addition, a consequence of such a «preferential» regime for PSAs may be the transition of subsoil users operating under other conditions into the PSA regime, which will bring them enormous material benefit, and to the finances of the state and local self-government – significant «gaps».

The consequence of such a state of affairs will be underfunded programs of defense, education, science, social programs, etc.

The only possible way out of this situation is to amend the legislation on PSAs (including environmental and tax legislation), which will provide for:

- mandatory disclosure of PSAs to the public;
- transfer of the EIA procedure to the stage of development of PSA projects;
- payment by subsoil users operating under PSA conditions of land fee, environmental tax, and rent payment for special use of water.

6

STRATEGIC AND CRITICAL MINERAL RESOURCES IN UKRAINE AND WORLDWIDE



The present-day conditions in which we exist compel industrial countries and alliances of countries to recognize the need for certain types of mineral resources, which they define as Critical Raw Materials. There exist different methodologies and approaches to defining critical raw materials in different countries, but they are united by the following main characteristics:

- the need for these mineral resources for purposes of development of the economy, defense sector, high technologies, science, etc.;
- complexity or risks of supply.

For example, Regulation (EU) 2024/1252 of the European Parliament and of the Council of 11 April 2024³², establishing a framework for ensuring a secure and sustainable supply of critical raw materials (hereinafter – the Critical Raw Materials Act), a key act of EU legislation in this field, defines critical raw materials as raw materials that are considered critically important due to their high economic importance and high risks of supply, which are often accompanied by a high concentration of supply from a few third countries.

Strategic raw materials under CRMA	Critical raw materials under CRMA	Strategic minerals under the decision of the NSDC of 16 July 2021 ³³
(a) bauxite/alumina/ aluminium (b) bismuth (c) boron – metallurgical grade	(a) antimony (b) arsenic (c) bauxite/alumina/ aluminium	Metallic ores 1. Aluminium 2. Beryllium 3. Vanadium

³² <https://eur-lex.europa.eu/eli/reg/2024/1252/oj/eng>

³³ Remains in force until approval by the CMU of the list of strategic minerals and components and/or the list of critical minerals and components.

(d) cobalt	(d) barite	4. Bismuth
(e) copper	(e) beryllium	5. Tungsten
(f) gallium	(f) bismuth	6. Gallium
(g) germanium	(g) boron	7. Hafnium
(h) lithium – battery grade	(h) cobalt	8. Germanium
(i) metallic magnesium	(i) coking coal	9. Iron
(j) manganese – battery grade	(j) copper	10. Gold
(k) graphite – battery grade	(k) feldspar	11. Indium
(l) nickel – battery grade	(l) fluorspar	12. Yttrium
(m) platinum group metals	(m) gallium	13. Lithium
(n) rare earth elements for permanent magnets (Nd, Pr, Tb, Dy, Gd, Sm and Ce)	(n) germanium	14. Magnesium
(o) metallic silicon	(o) hafnium	15. Manganese
(p) metallic titanium	(p) helium	16. Lanthanide group metals
(q) tungsten	(q) heavy rare earth elements	17. Arsenic
	(r) light rare earth elements	18. Copper
	(s) lithium	19. Nickel
	(t) magnesium	20. Niobium
	(u) manganese	21. Tin
	(v) graphite	22. Lead
	(w) nickel – battery grade	23. Scandium
	(x) niobium	24. Silver
	(y) phosphate rock	25. Strontium
	(z) phosphorus	26. Antimony
	(aa) platinum group metals	27. Tantalum
	(ab) scandium	28. Tellurium
	(ac) metallic silicon	29. Titanium
	(ad) strontium	30. Uranium
	(ae) tantalum	31. Cesium
	(af) metallic titanium	32. Zinc
	(ag) tungsten	33. Zirconium
	(ax) vanadium	Non-metallic mineral resources
		34. Barite
		35. Graphite
		36. Potash salt
		37. Fluorite

The Critical Raw Materials Act defines critical and strategic raw materials and presents them in two lists of mineral resources (approved by Annexes I and II). The lists are approved by the Critical Raw Materials Act itself and are subsequently revised in accordance with formulas established by the respective annexes.

The Critical Raw Materials Act also establishes criteria and procedures for evaluation of strategic projects aimed at development of critical and strategic raw materials and improvement of supply. Such projects will be supported at the EU level and must be implemented under simplified permitting procedures, but with compliance with the requirements of directives on Environmental Impact Assessment and the Aarhus Convention (however, the Critical Raw Materials Act establishes limitations regarding timeframes for different stages of the EIA). According to the intention of the authors, implementation of such projects should improve the position of the EU regarding supply chains of critical raw materials. At present, it is known³⁴ that the European Commission has received 170 applications related to strategic raw materials defined under the Critical Raw Materials Act, including lithium, nickel, cobalt and graphite for batteries, as well as rare earth elements for permanent magnets. Of the submitted applications, 77 relate to extraction, 58 to processing, 30 to recycling, and 5 to substitution. The majority of applications (121) were submitted from the EU, while 49 applications were submitted from outside the EU. All received applications will undergo evaluation, based on the results of which the European Commission will prepare a draft list of selected strategic projects for discussion with EU Member States.

Despite the safeguards existing in the document regarding carrying out Environmental Impact Assessment (EIA) and the absence of derogations from environmental protection issues, the Critical Raw Materials Act nevertheless remains a document that stimulates extraction and processing of critical raw materials, creates favorable conditions for this

³⁴ https://single-market-economy.ec.europa.eu/news/commission-receives-high-number-applications-responding-call-strategic-projects-under-critical-raw-2024-08-23_en

and encourages such activity. Therefore, these approaches raise concerns:

- whether implementation of the Critical Raw Materials Act will lead to intensification of extraction worldwide, in particular deep-sea mining in the Ocean, which is particularly harmful?

- whether the requirements for Environmental Impact Assessment are sufficient for such projects, especially against the background of support for a large number of extractive projects? Is conducting EIA sufficient for this?

- whether the technology of recycling from extractive industry waste is sufficiently developed, and whether these processes do not additionally harm the environment?

- what is the contribution and influence of civil society on decision-making regarding development of critical raw materials? Is climate justice ensured?

- whether the public will be involved in selection of strategic projects under the Critical Raw Materials Act?

A number of Ukrainian and international non-governmental organizations (40+ organizations) have already expressed³⁵ concern regarding these and other issues, and in general regarding the orientation of the Critical Raw Materials Act toward reduction of permitting procedures and possible leveling of environmental standards and requirements. There are currently no answers to these questions.

At present, there exists an approved list of strategic and/or critical subsoil plots that have strategic importance for sustainable development of the economy and defense capability of the state, which is defined by the Decree of the President of Ukraine dated 23 July 2021, No. 306/2021 and Resolution of the Cabinet of Ministers of Ukraine dated 14 July 2025, No. 845 on approval of the lists of strategic and critical minerals and components and lists of strategic and/or critical subsoil plots (mineral deposits).

³⁵ <https://dixigroup.org/analytic/dixi-group-ta-shhe-40-gromadskyh-organizacij-pidgotuvaly-rekomendacziyi-do-proyektu-reglamentu-yes-pro-postachannya-krytychnoyi-syrovyny/>

In accordance with Annexes 1 and 2 to Resolution of the Cabinet of Ministers of Ukraine dated 14 July 2025 No. 845, the approved lists are as follows:

Strategic minerals and components	Critical minerals and components
Aluminium ores	Aluminium ores
Beryllium ores	Beryllium ores
Copper ores	Vanadium ores
Nickel ores	Bismuth ores
Niobium ores	Tungsten ores
Strontium ores	Gallium ores
Tantalum ores	Hafnium ores
Titanium ores	Indium ores
Uranium ores	Rare earth ores (yttrium; lanthanide group metals)
Zirconium ores	Lithium ores
Fluorite	Arsenic ores
	Copper ores
	Nickel ores
	Niobium ores
	Tin ores
	Lead ores
	Scandium
	Strontium ores
	Antimony ores
	Tantalum ores
	Tellurium ores
	Titanium ores
	Uranium ores
	Cesium ores
	Zinc ores
	Zirconium ores
	Potash salt
	Fluorite

Annex 3 to the Resolution contains a list of strategic and/or critical subsoil plots (mineral deposits) that will be granted for use through auc-

tions (electronic bidding) for the sale of a special permit for subsoil use. Thus, if the previous Resolution of the Cabinet of Ministers of Ukraine dated 14 February 2023 No. 132 contained a list of plots for conclusion of PSAs, the new Resolution of the Cabinet of Ministers of Ukraine dated 14 July 2025 No. 845 provides for granting of subsoil plots through competitive procedures (electronic bidding) for the sale of special permits.

The Cabinet of Ministers of Ukraine approved new lists in connection with entry into force of the Law of Ukraine «On Amendments to the National Program for Development of the Mineral Resource Base of Ukraine until 2030» dated 18.12.2024 No. 4154-IX (which, in particular, introduced amendments to the Subsoil Code of Ukraine).

As defined by Article 6 of the Subsoil Code of Ukraine (taking into account amendments introduced by Law No. 4154-IX), the list of strategic minerals and components includes metallic ores and non-metallic mineral resources of national importance (their useful components), which:

- have strategic significance as mineral raw materials and/or processed products from such mineral raw materials for domestic existing or prospective industrial production that ensures sustainable development of the economy, including export potential, and defense capability of the state, its economic security in the long-term perspective and development of an innovation-technological structure, contributing to decarbonization³⁶ of economic sectors and transition to environmentally friendly mobility;
- their supply on the global market has or may have a potentially significant gap relative to projected demand, which is due in particular to the duration of implementation of new projects for extraction (commercial development of deposits) of such mineral resources.

The list of mineral resources and components of critical significance includes the following mineral resources:

- metallic ores and non-metallic mineral resources of national importance (their useful components) classified by the Cabinet of Minis-

³⁶ **Decarbonization** is the process of reducing greenhouse gas emissions and transitioning to more environmentally clean energy sources and sustainable practices in order to reduce the impact of anthropogenic activity on climate change.

ters of Ukraine as belonging to the list of strategic minerals and components;

- other metallic ores and non-metallic mineral resources of national importance (their useful components) that have important significance as mineral raw materials and/or processed products from such mineral raw materials for domestic existing or prospective industrial production that ensures sustainable development of the economy and defense capability of the state, for which, as mineral raw materials and/or processed products from such raw materials, there is no substitute (at the current level of technological development), and at the same time there exists a high risk of supply disruptions of such mineral raw materials and/or processed products from such mineral raw materials to Ukraine.

As we can see, the criteria in general resemble European approaches to defining critical and strategic raw materials; however, they are rather general. Possibly, greater clarity will be provided by the Methodology for classification of mineral resources into the mentioned lists, as well as methodological recommendations regarding measures for reduction of supply risks and response, which are to be approved by the Government upon submission of the Ministry of Economy.

According to EU assessments, Ukraine possesses reserves of critical raw materials that «...may play a decisive role subject to closer cooperation and integration with EU energy markets».

Share in the global supply chain	Share of supply in the EU	Supply at the stage of processing or extraction
Coking coal 1.6%	–	Processing
Gallium 2.2%	Gallium 2%	Processing
Hafnium 1.4%	Hafnium 14%	Processing
Iron ore 1.2%	Iron ore 1%	Processing
Iron ore 2.8%	Iron ore 12%	Extraction
Krypton 33%	Krypton 5%	Processing
Manganese 4.4%	Manganese 19%	Processing
Manganese 3.4%	Manganese 3%	Extraction
Neon 29.7%	Neon 14%	Processing
Scandium 4.2%	–	Processing
Kaolins 24.2%	Kaolins 28%	Extraction

Metallic titanium 3.8%	Metallic titanium 2%	Processing
Metallic titanium 6.3%	–	Extraction
Titanium 1.4%	–	Processing
Titanium 6.3%	–	Extraction
–	Titanium ores 9%	Extraction
Natural graphite 1.2%	–	Processing
–	Natural graphite 7%	Extraction
Zirconium 1.6%	–	Extraction
–	Xenon 2%	Processing

Source: Study on the critical raw materials for the EU 2023³⁷ (selected data with shares above 1%).

In addition to EU studies regarding Ukrainian reserves of critical raw materials, there is little information available in public access. There are several statements by Ukrainian government officials that are not documentarily confirmed (again oriented toward the «sale» of Ukrainian subsoil for the needs of the EU and other countries). For example, a post³⁸ on Facebook by the Prime Minister of Ukraine Yuliia Svyrydenko: «Ukraine has the largest reserves of lithium and titanium in Europe and significant deposits of other minerals», or a quotation of the former head of the State Service of Geology and Subsoil Roman Opimakh for *Forbes*³⁹: «Lithium reserves in Ukraine are sufficient to provide batteries for almost 20 million electric vehicles; lithium reserves in Ukraine constitute 1% of global reserves, or one third of European reserves». There are also a number of presentations⁴⁰ of the State Service of Geology and Subsoil and publications⁴¹ of the State Commission on Mineral Reserves

³⁷ <https://op.europa.eu/en/publication-detail/-/publication/57318397-fdd4-11ed-a05c-01aa75ed71a1>

³⁸ <https://www.facebook.com/yulia.svyrydenko/posts/pfbid02vqiidoL5FgdSZ21jgvBEAystFyG6x2osg5QjUGkMo6MSP4HBictjpaop7pegzbFSI>

³⁹ <https://forbes.ua/company/ukraina-mayzhe-progavila-litievu-likhomanku-khochamae-veliki-pokladi-khto-spodivaetsya-zaskochiti-v-ostanniy-vagon-akumulyatornogo-bumu-17072023-14805>

⁴⁰ <https://www.geo.gov.ua/wp-content/uploads/presentations/ukr/analiz-rozvytku-haluzey-krytychnykh-korysnykh-kopalyn.pdf>

⁴¹ <https://www.dkz.gov.ua/ua/diyalnist/publikatsiji/229-rodovishcha-kritichnoji-mineralnoji-sirovini-ukrajini-stan-i-perspektivi>

regarding Ukrainian deposits of critical raw materials. The exact volumes of reserves were classified as «secret».

Recently, after signing of the agreement between Ukraine and the United States on establishment of the American – Ukrainian Recovery Investment Fund, the Security Service of Ukraine, by its Order dated 29.05.2025 No. 207, declassified data on all balance reserves in subsoil, including diamonds, gold, lithium, titanium, by making amendments to the List of information constituting state secrets approved by Order of the Central Directorate of the Security Service of Ukraine dated 23 December 2020 No. 383.

After removal of the «secret» classification, EPL submitted a request to the State Service of Geology and Subsoil for the purpose of obtaining information regarding approved lithium reserves on the lithium ore plot «Dobra» located in Kirovohrad region, which is to become the first project under the joint subsoil agreement between Ukraine and the United States. However, the State Service of Geology and Subsoil refused to provide the requested information due to the operation of martial law in Ukraine. Thus, in practice, information on balance reserves remains inaccessible.

Regarding lithium ores

In the Law of Ukraine «On Amendments to the National Program for Development of the Mineral Resource Base of Ukraine until 2030» dated 18.12.2024 No. 4154-IX, the following information is provided regarding lithium:

- lithium is classified under Category B «Category B: significant reserves, limited or absent extraction (non-profitable)»;
- prospects for creation of a domestic mineral resource base of lithium and transformation of Ukraine from an importer into an exporter of lithium products are assessed as high. This is connected with the possibility of development of the Polokhivske and Shevchenkivske deposits and the «Dobra» plot (Nadiia and Stankuvatske) of petalite, spodumene and spodumene-petalite ores.

By Resolution of the Cabinet of Ministers of Ukraine dated 14 July 2025 No. 845, lithium ores are classified as mineral resources of critical significance.

For expansion of the mineral resource base of lithium ores, it is envisaged to conduct prospecting and prospecting-evaluation works at the expense of the state budget, own funds of business entities and other sources not prohibited by law.

At present, four explored lithium deposits are located in Ukraine: Polkhivske, the «Dobra» plot (Kirovohrad region), Shevchenkivske (Donetsk region) and the «Kruta Balka» plot (Zaporizhzhia region). Development of the «Dobra» lithium ore plot in Kirovohrad region will become the first project within the framework of the American-Ukrainian Recovery Fund.

The Shevchenkivske deposit plot and the «Kruta Balka» plot are currently located in temporarily occupied territories. Therefore, these plots cannot be considered prospective for creation of a domestic mineral resource base, since the state does not have access to them.

Using lithium as an example, it can be seen that the declared reserves in the subsoil of Ukraine are such that require geological exploration and confirmation.

However, the Program on development of the mineral resource base does not contain information about seizure by the Russian Federation of two out of four key lithium deposits as a result of the full-scale invasion, namely the Shevchenkivske deposit plot and the «Kruta Balka» plot, as a result of which Ukraine lost a potential economic resource.

Also, as of today, no research has been conducted regarding the impact of extraction and further processing of lithium on the state of the environment and the associated environmental risks. Undoubtedly, lithium may be harmful to the environment due to pollution of water and soil that occurs during extraction and processing of the metal. Release of lithium into the environment may negatively affect flora and fauna, disrupting ecological balances. It is evident that for the state, the prospect of economic development of the mineral resource base, in particular through development of deposits containing lithium, prevails over compliance with environmental safety and balance.

In addition, let us be realistic. Reserves of critical raw materials in Ukraine are not high. Critical raw materials are present in Ukrainian subsoil and are included in the list of certain mineral resources and a

certain nomenclature, but Ukraine is not a leading source of critical raw materials, neither in the world nor in the EU. Therefore, even in the event of development of most deposits containing critical raw materials, this may not bring the expected results for Ukraine.

Moreover, most Ukrainian deposits require significant investments in exploration. Thus, according to calculations of the State Service of Geology and Subsoil, at present, only for investments in 10 prospective projects on extraction and primary processing of critical raw materials more than USD 1.8 billion is needed⁴². And this is only for 10 projects and on the basis of the investor's capacities. Construction of own capacities for intermediate and final production will require even more investment. The question remains open whether such investments will be made during the war, if they were not made before.

The global market of critical raw materials is concentrated⁴³ around several key players, and Ukraine is currently not among them. The most influential country in this market is China, which controls about 97% of production of rare earth mineral resources and 60% of global processing of lithium and 80% of cobalt. Other major players are the United States, the EU, Australia, Canada, and the countries of Africa and South America.

There is another strategic challenge, namely – the reserves of critical raw materials of the Russian Federation. For example, about 45% of Russian exports of titanium products accounted for the EU; the Russian Federation has reserves of inert and noble gases, nickel (about 20% of world Class I nickel, which is a large share), palladium, vanadium, and boron. These mineral resources are key in manufacture of elements for creation of renewable energy capacities, high technologies, and the aerospace industry. All these sectors of science and industry will feel the impact of sanctions against the Russian Federation and potentially, sooner or later, may join the Russian lobby for lifting sanctions against the Russian Federation. Taking into account the typically pro-Russian statements of the American billionaire Elon Musk, who has business in

⁴² <https://www.geo.gov.ua/wp-content/uploads/presentations/ukr/analiz-rozvytku-haluzey-krytychnykh-korysnykh-kopalyn.pdf>

⁴³ <https://zn.ua/ukr/ECONOMICS/kritichna-sirovina-drajver-protistojannja-derzhav-ukhkh-storichchi.html>

the aerospace sector, it is logical to assume that this lobby is already actively working. And this must be taken into account.

On the other hand, Russia's invasion of Ukraine in 2022 forced the EU to move away from dependence on Russian hydrocarbons and to accelerate the energy transition. These changes required an increase in renewable energy generation capacities and production of electricity storage means, as well as heat pumps for energy-efficient heating and cooling. These actions affected the revitalization of demand for critical raw materials. Also, the invasion of the Russian Federation into Ukraine in 2022 forced the EU to reassess its defense potential (Assessment of gaps in EU defense financing)⁴⁴, implementation of which affected demand for critical raw materials. It is logical to assume that such needs, and accordingly demand, also exist in countries that are not part of the EU but are developing renewable energy sources and revising approaches to development of the defense sector, and therefore demand for critical raw materials will grow not only in the EU, but throughout the world.

So how is Ukraine going to dispose of its deposits of critical mineral resources?

The short answer is – to give them to someone. How and under what rules – is not known with certainty.

Global reserves of critical raw materials are quite limited. Therefore, the question arises how a country that has reserves of such raw materials should best dispose of them. What supply chains does Ukraine need for development of its defense sector and renewable energy capacities, energy storage? Where will Ukraine obtain critical raw materials if its own extraction is insufficient? And does Ukraine need this at all? A proper strategy on critical and strategic raw materials should have provided an answer to these questions, but it does not exist.

There is another set of questions to which a strategy should have provided an answer, namely, how will this race for critical raw materials affect the environment and the state of our planet? Reflections on this

⁴⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022JC0024>

topic are added by the views⁴⁵ of certain experts that the way to resolve the crisis of critical raw materials is opening of new deposits, improvement of beneficiation technologies and recycling, that is, repeated extraction of metals, in particular from technogenic waste. One of the supposed solutions may become deep deposits and resources of the World Ocean. (Incidentally, apparently the authors of the Critical Raw Materials Act also partly adhere to this view, as they define⁴⁶ critical raw materials as raw materials, in particular in unprocessed form, at any stage of processing and those arising as a by-product of other extraction, processing and recycling processes).

Has Ukraine conducted its comprehensive studies regarding the state's need for strategic or critical raw materials? No. At least, they are not available in open access.

However, it should be noted that in the public sphere there is nevertheless discourse on the start of development⁴⁷ of such a strategy for Ukraine. True, within the framework of this discourse, the Government discusses readiness to sell subsoil with deposits of critical raw materials for the EU (54 plots for putting up for electronic auctions and PSAs). At the same time, participants in the discussion also expressed views⁴⁸ regarding the need to build a value-added chain, integration of critical raw material chains into the economy of Ukraine, etc.

A certain role of a modern strategy in Ukraine is currently played by the already mentioned Law of Ukraine «On approval of the National Program for Development of the Mineral Resource Base of Ukraine until 2030»⁴⁹. However, as a Strategy, this document, unfortunately, does not withstand criticism.

⁴⁵ <https://brdo.com.ua/analytics/krytychna-syrovyna-korotkyj-likbez-dlya-vlasnykiv-nadr/>

⁴⁶ https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L_202401252

⁴⁷ <https://dixigroup.org/dixi-group-dopomozhe-rozrobyty-strategiyu-z-rozvytku-krytychnoyi-syrovyny/>

⁴⁸ <https://dixigroup.org/dixi-group-dopomozhe-rozrobyty-strategiyu-z-rozvytku-krytychnoyi-syrovyny/>

⁴⁹ <https://zakon.rada.gov.ua/laws/show/3268-17#Text>

Firstly, it has a low planning horizon, in fact only 5 years. During this period it is difficult to plan a sector in which special permits for core activity are issued for 30+ years.

Secondly, this National Program does not answer the main question: how Ukraine should dispose of the reserves of critical and strategic raw materials available to it in its own interests and what its interests consist in. With regard to critical and strategic raw materials, the Program is oriented rather toward export than toward building its own supply chains.

Despite the fact that the purpose of the Program is defined as:

«meeting the needs of the national economy in mineral resources through its own extraction, reducing Ukraine's dependence on imports of mineral resources and increasing export potential through extraction of mineral resources that are in high demand on the world market», the role of Ukraine in the critical raw materials market is prescribed to a greater extent as the role of a supplier of critical raw materials to the EU and other partners, since Ukraine's own needs are not determined, but only declared, while the needs of partners, in particular the EU, are mentioned specifically:

«In particular, the Critical Raw Materials Act Regulation adopted by the European Parliament, which entered into force in April 2024, certifies the urgent need to reduce dependence and increase resilience of important supply chains of mineral raw materials and products of their processing in the European Union, increase circularity of critical raw materials, diversify sources and secure ways of their supply, in particular through strengthening external partnership.

...

Under such conditions on the global market, taking into account the resource potential of Ukraine, our state has significant opportunities to increase its own industrial capacities operating on the basis of strategic and critical mineral raw materials, and to stimulate economic growth through implementation of modern technologies and integration into global supply chains of critical materials and products based on them, paying special attention to beneficiation and/or processing of such mineral resources, including recycling, as a basis for integration of Ukraine into global value chains».

And the justification by which the state substantiates the need for mineral resources (in particular those classified as strategic and critical) raises concern:

- substitution of imports of hydrocarbons through development of domestic extraction of oil and gas and their processing;
- the need of nuclear power plants of Ukraine for natural uranium;
- ensuring mining enterprises with high-quality iron ores.

That is, the state formulates needs for mineral resources not in favor of decarbonization of the economy or development of the currently relevant defense sector, but in favor of major polluters.

The approach to development of titanium deposits is also interesting. Regarding extraction of titanium, the following is stated:

«The result of attracting investors from Ukraine, member states of the Organisation for Economic Co-operation and Development, as well as from other states with which Ukraine has concluded memoranda (agreements) on partnership (cooperation) in the field of mineral resources of strategic and/or critical significance, should be ensuring sustainable development of the national economy, in particular through creation in Ukraine of a sustainable link of production of high-tech products, as well as indispensable components for technologies of decarbonization of the economy, which will increase the significance of Ukraine on the international arena, through:

- restoration in Ukraine of full-cycle titanium production, reduction of export of titanium concentrates in favor of increasing export of products with high added value (titanium dioxide pigment, sponge) with subsequent establishment of production of metallic titanium to meet the needs of the domestic aerospace, defense and nuclear industries, as well as facilitating reduction of dependence of partner states of Ukraine on risky imports».

At first glance, this is a good approach, it is only a pity that such references are episodic and appear together with references to meeting the needs of other states.

There is an interesting example with titanium deposits. In October 2024⁵⁰, the joint-stock company «United Mining and Chemical

⁵⁰ <https://prozorro.sale/auction/LPE001-UA-20240719-99204/>

Company» was privatized on Prozorro.Sale. The purchaser of UMCC became «Cemin Ukraine» LLC, which is part⁵¹ of the NEQSOL Holding group of Nasib Hasanov (Azerbaijan) and which effectively obtained access to Ukrainian titanium subsoil, since UMCC holds the relevant special permits and was the largest state enterprise for extraction of titanium-containing ores. That is, it creates the impression that Ukraine plans to develop its own capacities for extraction of titanium and to meet economic needs in this raw material in sectors of decarbonization and defense, but at the same time sells into private hands a state enterprise that holds key special permits for development of titanium ores.

Also noteworthy are the innovations (which we partially mentioned above) regarding who may become a subsoil user of critical and strategic subsoil. Thus, in addition to the requirements for obtaining the right to use such subsoil, the following requirement has been added:

- either to be a citizen of Ukraine / a citizen / an individual – a resident of a state that is a member of the OECD (Organisation for Economic Co-operation and Development), or another state with which Ukraine has concluded a Memorandum (agreement) on partnership (cooperation) in the field of mineral resources of strategic and/or critical significance (hereinafter – the Memorandum);

- or to be a legal entity – a resident of Ukraine / a state that is a member of the OECD, or another state with which Ukraine has concluded a Memorandum, provided that in such legal entity: a significant participation is held by Ukraine or a state that is a member of the OECD, or another state with which Ukraine has concluded a Memorandum, and/or significant participation is held by legal entities registered in Ukraine or in a state that is a member of the OECD, or another state with which Ukraine has concluded a Memorandum, and/or significant participation is held by or the ultimate beneficial owners are citizens of Ukraine, or individuals – citizens or residents of a state that is a member of the OECD, or another state with which Ukraine has concluded a Memorandum.

⁵¹ https://youcontrol.com.ua/catalog/company_details/44520664/#express-universal-file

That is, access to Ukrainian strategic and critical subsoil will be obtained only by legal entities or individuals of Ukraine, OECD member states, or any other state with which a corresponding Memorandum has been concluded; thus, the Ukrainian legislator narrows the circle of subsoil users that may access such subsoil. However, Azerbaijan, for example, is not a member of the OECD, yet it will obtain access to titanium ores through privatization of UMCC.

Based on this norm, international activity regarding conclusion of such memoranda and other international documents becomes clear. Thus, on 13 July 2021, the EU and Ukraine signed a Memorandum of Understanding⁵² on partnership in the field of mineral resources, which, in particular, defined the principles of cooperation regarding «critical» raw materials, the main directions of which are as follows:

- approximation of regulatory frameworks, environmental and social standards of extractive industries;
- integration of supply chains of critical raw materials between the EU and Ukraine;
- joint research and scientific work in the field of critical raw materials, especially in the context of decarbonization and digitalization of extraction;
- creation of joint technical and information centers for exchange of information;
- implementation of joint investment projects for development of subsoil containing critical raw materials.

Also, in November 2024, a corresponding joint statement with Italy was signed (the text of the document is also closed). It is only reported that its subject⁵³ is strengthening value-added chains of critical raw materials, international cooperation, research and innovation, mapping and exploration. A Declaration of Intent on cooperation between the Government of Ukraine and the Government of the French Republic in

⁵² https://ec.europa.eu/commission/presscorner/detail/en/ip_21_3633

⁵³ <https://delo.ua/industry/ukrayina-ta-italiya-rozsiryat-spivpracyu-u-sferi-postacannya-kriticno-vazlivoyi-sirovini-438675/>

the field of critical metals is also being prepared for signing, and a resolution of the Cabinet of Ministers on its signing has been issued⁵⁴.

The Government has vast plans for the sale of subsoil use rights to Ukrainian strategic and critical subsoil: the competition for conclusion of the first lithium PSA was announced on 27 August 2025.

It is interesting that in parallel with the «sale» of Ukrainian subsoil to investors for specific projects and in general, the Government, among other things, notes that for some of these projects special permits have already been issued. For example, we have already mentioned 10 projects that require more than USD 1.8 billion in investments. Among them (and others) there are deposits with valid special permits, for example:

- Polokhivske deposit (lithium, operator UkrLithiumMining);
- Perzhanske, Balakhivske and Yastrebitske deposits (beryllium, graphite, titanium, zirconium, operator BGV Group);
- Kapitonivske deposit (nickel, cobalt, operator Mine Extraction);
- Prutivske deposit (nickel, cobalt, operator Kolormet Ukrainy);
- Burtynske (graphite, operator ONUR Group);
- Trostianetske deposit (titanium, zirconium, operator Nadra Ukrainy (90%));
- in total 6 deposits of titanium and zirconium (UMCC, GDF, Velta, Kolorovi Metaly, Demurivskiy GZK), etc.

Thus, a logical question arises as to how an investor is to be interested in development of a deposit if a permit for its development has already been issued to another company. Theoretically, such cooperation is possible, but it lacks transparency and clarity at the level of cooperation conditions.

Another large layer for research is the role of critical raw materials in the Ukraine Facility Plan – a major financial instrument of the EU, through which the EU plans to finance the post-war recovery of Ukraine. However, in this part, not everything is unambiguous, taking into account the following:

⁵⁴ <https://www.kmu.gov.ua/npas/pro-pidpysannia-deklaratsii-pro-namiry-shchodospivrobitnytstva-mizh-uriadom-ukrainy-ta-uriadom-s1321241224>

- as of today, Ukraine does not have a comprehensive and strategic approach to the use of strategic and critical raw materials;
- reserves of strategic and critical mineral resources are not reliably known. Data on them are closed, and the matter is not only this. Most deposits are not explored, and exploration requires investments. Whether these investments will come during the war and under the «corruption flair» of Ukrainian subsoil use remains an open question;
- Ukraine does not ask the question of which critical mineral resources are necessary for it for decarbonization of the economy, development of renewable energy sources and/or the defense sector or even any other sphere or industry. Instead of creating its own closed production cycles or building its own supply routes for critical raw materials, Ukraine is focused on satisfying demand in the EU, the United States and other countries;
- expansion of integrated cooperation in the field of strategic and critical mineral resources with the EU and other countries is in one way or another reflected in such important documents for Ukraine as the Ukraine Facility Plan, however, there is no own strategy of handling critical raw materials in Ukraine;
- decisions on inclusion of the issue of critical raw materials in these documents are taken politically directly by the Government and the Office of the President, without prior elaboration at the level of executive authorities, not to mention an approach based on a comprehensive strategy;
- the consequences of such actions will be an increase in extraction of critical mineral resources on the territory of Ukraine (and not for its own needs), which is harmful for the environment, while no prior assessment of such impact is carried out. Although the Ukraine Facility Plan contains certain positive aspects, in particular, transition to ESG reporting standards for the extractive sector and development of recommendations to eliminate gaps in legislation are planned. However, among the steps for implementation of this reform only publication of a study on assessment of current legislation is not foreseen, which indicates a formal approach even for this single aspect of the reform aimed at the environment.



Geological exploration is an important stage of preparation of any project related to the use of mineral resources, construction of infrastructure or development of a territory, which aims at detailed collection and analysis of geological data for determination of soil composition, hydrological conditions, geological structures and other factors that may influence the process of subsoil use. In short, during geological exploration, detailed information about geological conditions on a certain subsoil plot is collected.

The importance of the stage of geological exploration of mineral deposits lies in the correct determination of mineral reserves, that is, determination of actual and complete data of geological exploration of deposits.

Since the amount of mineral reserves approved by the State Commission on Mineral Reserves influences the value of the special permit for the purpose of extraction of mineral resources, it is important that at the stage of geological exploration the quantity of reserves is correctly calculated and their volume is not understated, since in the opposite case this may lead to a significant reduction in the value of the special permit and loss by the state of funds that it could actually receive from their sale.

For geological exploration, including pilot industrial development of mineral deposits, subsoil is granted for use after obtaining a special permit for geological exploration.

A special permit for geological exploration, including pilot industrial development, of mineral resources with subsequent extraction of mineral resources (commercial development of deposits) (hereinafter – geo-

logical exploration) is granted for a period from 3 to 20 years (Article 15 of the Subsoil Code of Ukraine).

The Law grants the subsoil user the right to obtain a special permit for extraction of mineral resources without conducting an auction if, on the basis of an existing special permit for geological exploration held by it, at its own expense it carried out geological exploration of the subsoil plot, evaluation of explored mineral reserves, appraisal of forecast (prospective) mineral resources approved by the State Commission on Mineral Reserves (regardless of the date of approval of mineral reserves), and submitted documents for obtaining a special permit for extraction of mineral resources on the respective subsoil plot not later than two years after expiration of the validity period of the special permit (Article 16-2 of the Subsoil Code of Ukraine).

Also, a special permit for geological exploration may be granted without conducting an auction in the following cases:

1. For geological exploration of mineral resources of local significance, provided that the total area of the subsoil plot for which the special permit is granted does not exceed 25 hectares, and the applicant is the owner of the land plot (or several adjacent land plots) within which such subsoil plot is located.

2. For geological exploration of groundwater (except mineral waters) for all needs (except production of bottled drinking water and/or its transfer for bottling, and/or for drinking water supply), provided that the volume of extraction of groundwater from water intakes exceeds 300 cubic meters per day.

3. For geological exploration of groundwater (except mineral waters) for drinking water supply, extraction of groundwater (except mineral waters), as well as for drinking water supply – regardless of the volume of extraction.

4. For geological exploration of natural therapeutic resources exclusively for therapeutic purposes by health care and sanatorium and resort facilities that specialize in their use and have medical infrastructure.

In all other cases, a special permit for geological exploration, including pilot industrial development of mineral resources with subsequent extraction of mineral resources (commercial development of deposits), is granted based on the results of an auction conducted in accordance

with the procedure established by Resolution of the Cabinet of Ministers of Ukraine dated 23 September 2020 No. 993.

Extension of the validity period of a special permit for geological exploration shall not be carried out (Article 16-4 of the Subsoil Code of Ukraine).

Certain specifics of conducting geological exploration

Within one subsoil plot, geological exploration works may be carried out under several special permits (except for mineral resources developed by open-pit method). At the same time, it is precisely in the agreement on subsoil use conditions that the spatial boundaries and coordinates of corner points of the subsoil plot granted for use are determined for each type of mineral resource.

It is also permitted to grant special permits for geological exploration for a part of a mineral deposit if development of the entire deposit is technically impossible, as confirmed by the State Commission on Mineral Reserves, and if for the respective part of the deposit a special permit for subsoil use has not been granted.

The possibility to carry out geological exploration works within one subsoil plot under several special permits and granting of a special permit for part of a deposit was established by the Law of Ukraine «On Amendments to Certain Legislative Acts of Ukraine Regarding Improvement of Legislation in the Field of Subsoil Use» No. 2805-IX dated 01 December 2022, which entered into force on 28 March 2023.

The procedure and conditions for conducting geological exploration works in the process of geological exploration of subsoil are regulated by the Regulation on stages of geological exploration works for solid mineral resources, approved by Order of the Committee of Ukraine on Geology and Subsoil Use dated 15.02.2000 No. 19, which also defines the following terminology.

Geological exploration works are a complex of special works and studies carried out for the purpose of geological exploration of subsoil.

The geological exploration process is a combination of geological exploration works on mapping, forecasting, identification and geological-economic evaluation of increasingly localized ore-bearing (productive)

subsoil plots by the method of successive approximations from ore districts (fields) to ore deposits (blocks).

A stage of geological exploration works is a part of the geological exploration process defined by its inherent objects of geological study, objectives and methods of geological exploration works, and requirements for their final results.

As we can see, geological exploration of subsoil is carried out through performance by the subsoil user of a set of sequential geological exploration works, which are carried out for the purpose of:

- mapping of the territory of Ukraine and its individual regions;
- search, exploration, preparation for development and exploitation of mineral deposits;
- establishment of general approaches for all types of solid mineral resources regarding determination of objects of geological exploration works, requirements to their content and composition, as well as results of works at different stages and substages of the geological exploration process.

The following stages of geological exploration works for solid mineral resources are distinguished:

Stage I. Regional geological research of the territory of Ukraine.

Stage II. Prospecting and prospecting evaluation of mineral deposits.

Stage III. Exploration of mineral deposits.

Geological exploration works may commence from any stage (substage) if the level of geological knowledge of the object of works is sufficient for their geological and techno-economic justification. In the case of identification of manifestations (ore occurrences) of scarce mineral resources over a significant area, it is recommended to conduct prospecting works prior to completion of geological surveying works in the region (district).

The first stage of geological exploration works is regional geological exploration of the territory of Ukraine, which includes three substages:

Substage I-1. Regional geological and geophysical research at a scale of 1:1,000,000 – 1:500,000.

Substage I-2. Regional geological mapping, geophysical and geological forecasting works at a scale of 1:200,000 (1:100,000).

Substage I-3. Geological mapping and geological forecasting works at a scale of 1:50,000 (1:25,000).

All three substages differ in scale and level of detail of territorial study.

The second stage of geological exploration works includes two substages:

Substage II-1. Prospecting works.

Substage II-2. Prospecting and evaluation works.

Prospecting works are carried out with the purpose of identifying mineral resources within known and potential ore-bearing (productive) fields, zones, basins, local perspective subsoil plots identified by prior geological mapping, geological forecasting and other works.

Prospecting of deposits of solid mineral resources is aimed at identification of specific geological-industrial types of mineral deposits; at the same time, geological studies should also be carried out for associated mineral resources and components that may be identified under these geological conditions.

Based on the results of conducted prospecting works, a geologically substantiated assessment of prospective resources is prepared; an initial geological-economic evaluation (GEO-3) of potential deposit plots and ore occurrences is carried out; and technical-economic considerations (TEC) are developed regarding their possible industrial significance and expediency of further works.

The main tasks of prospecting and evaluation works are the rejection of occurrences (ore occurrences) of mineral resources that are unsuitable for industrial use, preliminary geological-economic evaluation (GEO-2) of the industrial significance of discovered mineral deposits and the expediency of their industrial development, and preparation of priority objects for conducting exploration works.

Objects of prospecting and evaluation works may include:

- potential mineral deposits;
- prospective subsoil plots;
- occurrences (ore occurrences) of mineral resources recommended for further geological exploration works based on GEO-3.

Exploration of mineral deposits is the third and final stage of geological exploration works for studying subsoil. Exploration is conducted only on

those deposits (plots) of mineral resources that have received a positive geological-economic evaluation as a result of previous geological exploration works and have been recognized as priority for industrial development.

Objects of exploration works may include:

- previously explored mineral deposits (plots) recommended for exploration based on positive results of prospecting and evaluation works;
- previously explored plots of mineral deposits that are being developed;
- mineral deposits (plots) that were explored earlier and for various reasons not brought into industrial development.

Exploration works may be conducted repeatedly on objects that were explored earlier, in accordance with a substantiated need for additional study of existing mineral reserves. Plots of mineral deposits that are intended to be developed by separate business entities are considered as separate objects of exploration works.

Exploration works financed from the state budget are carried out on objects provided for by state comprehensive or targeted programs for development of the mineral resource base of the country for the near-term perspective. Economic efficiency of industrial development of mineral deposits (plots) involved in exploration is substantiated by materials of feasibility study (FS).

Exploration works are carried out with the purpose of preparing mineral deposits (plots) for industrial development in accordance with the requirements of the Classification of reserves and resources of mineral resources of the state subsoil fund.

In the case of conducting additional exploration works on deposits (plots) that are being developed, the exploration system is adjusted based on the results of comparison of exploration and operational data and recommendations of the State Commission on Mineral Reserves, as well as data obtained during expert examination and evaluation of mineral reserves.

Based on the results of conducted exploration works, a detailed geological-economic evaluation (GEO-1) of the industrial significance of reserves of a mineral deposit (plot) is carried out, the materials of which include:

- characteristics of the geological structure of mineral deposits, their technological properties, mining-geological and other conditions of occurrence in a volume sufficient for adoption of substantiated design decisions regarding the method and system of extraction and the scheme of comprehensive processing of mineral resources;

- feasibility study of permanent cut-off parameters and calculation of mineral reserves;

- forecast economic evaluation of the total effect from exploitation of the mineral deposit (plot) with determination of forecast indicators of entrepreneurial activity of the mining and processing complex in a volume sufficient for making a decision on investment in the project of its construction.

Thus, based on the results of exploration of mineral deposits, which is the final stage of studying the deposit, GEO-1 is carried out.

After completion of the set of geological exploration works, a geological report with calculation of mineral reserves is prepared, which is submitted to the State Commission on Mineral Reserves for approval of reserves.

The standard geological report includes information, in particular, regarding:

- geological structure of the area of works and the deposit;
- qualitative characteristics of the mineral resource;
- conditions of development of the deposit;
- calculation of reserves;
- evaluation of readiness of the deposit for industrial development.

The geological report must also include information on environmental protection measures, in particular regarding:

- characteristics of possible negative impact on the environment;
- list of environmental restrictions formulated during the process of adoption of design decisions;
- observance of interests of the region of construction;
- environmental protection measures;
- forecast of the state of the environment after implementation of the project of industrial development of the deposit.

Materials of geological-economic evaluation of mineral reserves of a deposit are submitted for expert examination and approval to the State Commission on Mineral Reserves. On the basis of Reports containing

materials of geological exploration of mineral deposits, calculation of their reserves and feasibility study of industrial significance (hereinafter – geological-economic evaluation), state expert examination and evaluation of mineral reserves is carried out (paragraph 7 of the Regulation on the procedure for conducting state expert examination and evaluation of mineral reserves, approved by Resolution of the Cabinet of Ministers of Ukraine dated 22 December 1994 No. 865 (Resolution No. 865)). Detailed specifics of conducting state expert examination and evaluation of mineral reserves are considered in detail in Section 8 of the Manual.

As stated in subparagraph 2 of paragraph 7 of Regulation No. 865, verification of reliability of GEO materials of mineral deposits directly at the site of geological exploration works is carried out only if necessary by decision of the State Commission on Mineral Reserves. In order to strengthen state control at the stage of approval of reserves in the State Commission on Mineral Reserves, it is necessary to carry out verification of reliability of GEO materials of deposits at the site of geological exploration works on a mandatory basis.

After completion of works on geological exploration of subsoil, conducting expert examination of GEO materials and approval of reserves by the State Commission on Mineral Reserves, the subsoil user submits the geological report on completed works and their results to the State Information Geological Fund of Ukraine (State Scientific and Production Enterprise «GeoInform Ukraine»).

Reports and materials based on the results of all types and stages of geological exploration works belong to secondary (processed) geological information, as defined by Resolution of the Cabinet of Ministers of Ukraine dated 7 November 2018 No. 939 «On issues of disposal of geological information».

Use of secondary (processed) geological information that is state property is free of charge. Such geological information must be placed in open online access on the web portal of the State Geological Fund and/or provided in the form of copies (in electronic form) (paragraph 9 of Resolution of the Cabinet of Ministers of Ukraine No. 939). Payment for secondary geological information that is state property is charged from subsoil users exclusively in the case of obtaining a special permit

as compensation for state expenses for conducted geological exploration works (paragraph 10 of Resolution of the Cabinet of Ministers of Ukraine No. 939).

It is noteworthy that, according to the Resolution of the Cabinet of Ministers of Ukraine dated 8 November 1996 No. 1366, the State Scientific and Production Enterprise «GeoInform Ukraine» has been granted the status of a State sectoral archive. As defined by this Resolution, expenditures related to the activities of the specified archive are carried out within the limits of state budget funds allocated for financing geological exploration works of the State Service of Geology and Subsoil, and at the expense of contractual works. However, despite the fact that the State Scientific and Production Enterprise «GeoInform Ukraine» is maintained at the expense of the state budget, which is formed by taxpayers, all services are provided by the State Scientific and Production Enterprise «GeoInform Ukraine» exclusively on a paid and contractual basis. Contrary to Resolution of the Cabinet of Ministers of Ukraine No. 939, at present access to secondary geological information in the format of online access is not provided, and the requested geological information is provided only on a paid basis upon request of an interested person, which constitutes unlawful charging of a fee for information.

After approval of reserves by the State Commission on Mineral Reserves, the deposit is transferred to the subsoil user for the purpose of extraction of mineral resources and sale of commercial products of mining production in accordance with the special permit (license) and the mining allotment for subsoil use.

The Law provides for the right of the subsoil user to conduct additional exploration works (additional exploration), which are carried out in accordance with the recommendation of the State Commission on Mineral Reserves under a separate geological assignment and also belong to the stage of exploration of mineral deposits (Article 16 of the Subsoil Code of Ukraine). Additional exploration is carried out on the basis of a project for the purpose of determining (specifying) parameters of insufficiently studied plots, blocks, horizons, the results of which are approved by a Protocol of the State Commission on Mineral Reserves.

Certain issues of pilot industrial development of mineral resources

At the stage of geological exploration of a subsoil plot, the need may arise to carry out pilot industrial development (PID) of mineral resources, the purpose of which is to clarify geological features of the deposit, determine the expediency of further industrial development of the deposit and evaluate the economic attractiveness of development of the subsoil plot.

Specifying of geological features of the deposit provides for detailed study of its structure, characteristics of rocks, size and concentration of mineral resources or other resources.

PID is an integral part of works on geological exploration and may be carried out over the entire deposit or on its separate plots or occurrences. PID of mineral deposits is a specific transitional stage from geological exploration to commercial extraction of mineral resources.

Pilot industrial development (PID) is a set of works that includes scientific research and industrial development for the purpose of studying and exploitation of mineral resources or other natural resources.

Works related to PID are regulated by the Regulation on the procedure for organization and execution of pilot industrial development of mineral deposits of national significance, approved by Order of the Ministry of Environmental Protection dated 03.03.2003 No. 34/м.

The decision on conducting PID is taken by the subsoil user or by the customer (investor) of works on geological exploration of subsoil.

The expediency of PID is substantiated by materials of preliminary geological-economic evaluation (GEO-2) of reserves of the deposit and by PID project documentation.

PID is carried out on deposits of mineral resources, the industrial significance of which has been positively determined based on the results of preliminary geological-economic evaluation (GEO-2), but reliable determination of characteristics of mineral resources is possible only through trial extraction and processing of part of mineral reserves under industrial conditions.

Deposits are considered prepared for PID if the degree of geological and technical-economic study ensures the possibility of determining all available mineral resources and components, expected size of the de-

posit and its geological structure, for evaluation of their industrial significance.

In accordance with paragraph 4.5.4 of the Regulation on stages of geological exploration works for solid mineral resources, exploration of deposits of valuable mineral resources of very complex and extremely complex geological structure (groups 3-4) is recommended to be combined with pilot industrial development of typical occurrences of mineral resources within the boundaries of priority development plots.

PID of solid mineral resources is carried out on deposits of the third and second groups, and for new types of raw materials – of the first group of complexity of geological structure, with the purpose of:

- specifying certain mining-geological, technological, ecological-geological and other parameters necessary for evaluation of quantity and quality of identified mineral reserves;
- or experimental testing of new technologies, technical means and methods of extraction of mineral raw materials developed as a result of conducted scientific-research and experimental-design works.

For determination of deposits (plots) for which pilot industrial development of mineral deposits of national significance is foreseen, it is necessary to refer to the classification of deposits defined by Resolution of the Cabinet of Ministers of Ukraine dated 05 May 1997 No. 432.

Classification of mineral deposits by complexity of geological structure			
Group 1	Group 2	Group 3	Group 4
Deposits of simple geological structure with undisturbed or slightly disturbed occurrence, consistent quantitative and qualitative parameters of the deposits of main mineral resources, uni-	Deposits of complex geological structure with inconsistent quantitative or qualitative parameters of the deposits of main mineral resources, uneven distribution of main useful or harmful compo-	Deposits of very complex geological structure with variable quantitative or qualitative parameters of the deposits of main mineral resources, highly uneven distribution of main use-	Deposits of extremely complex geological structure with sharply variable quantitative or qualitative parameters of the deposits of main mineral resources, extremely uneven

form distribution of main useful and harmful components	nents	ful or harmful components	distribution of main useful or harmful components
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PID of hydrocarbons is carried out with the purpose of specifying existing data and obtaining additional data necessary for building a geological model of the deposit, geological-economic evaluation of reserves of hydrocarbon deposits and associated valuable components.

Requirements and conditions for carrying out pilot industrial development (PID)

PID is carried out on the basis of a Project for pilot industrial development, which is developed for the purpose of systematic study and evaluation of the potential of a mineral deposit and determination of its industrial attractiveness. These data are necessary for evaluation of the deposit potential, determination of its suitability for industrial development and evaluation of resource reserves.

Projects of PID of mineral deposits under exploration are a component part of the general project of geological exploration works (except for PID projects of hydrocarbon deposits, which are prepared separately) and are developed by the authors of the general project with involvement, where necessary, of specialists from specialized design organizations.

PID projects and annual plans for development of mining works of the enterprise are approved by the subsoil user and agreed with the State Labour Service. An electronic version of the PID project is submitted to the State Service of Geology and Subsoil.

PID projects include works regulated by relevant regulatory documents. Regulatory documents for conducting PID of mineral resources are developed by the State Service of Geology and Subsoil, approved by the Ministry of Economy and agreed with the State Labour Service.

After clarification of geological characteristics, an assessment of expediency of further industrial development of the deposit is carried out. This includes analysis of physical, technical, environmental and economic factors influencing the possibility and efficiency of resource ex-

traction. Aspects such as cost of extraction, transportation and processing, availability of necessary infrastructure, environmental constraints and socio-economic consequences are taken into account.

The duration of PID shall not exceed three years, and for groundwater, where PID of natural spring flow is carried out – five years.

Volumes of extraction during PID

During implementation of PID as a transitional stage from geological exploration to extraction, extraction of mineral resources may be carried out in a limited volume, which shall not exceed five percent (for hydrocarbons – 10 percent) of reserves recorded in the State Balance of Mineral Reserves on the basis of protocols of the State Commission on Mineral Reserves regarding consideration of the preliminary geological-economic evaluation of the deposit (GEO-2).

During PID, in the case of significant (more than 10 percent, and for hydrocarbons – in accordance with the Rules of development of oil and gas deposits) actual or forecast deviations of its main annual indicators from the project indicators, PID projects are subject to adjustment and re-approval. Amendments or additions to PID projects are approved by the subsoil user and agreed with the State Labour Service.

Mineral resources extracted during pilot industrial development are subject to sale under the general procedure (Part 1 Article 20 of the Subsoil Code of Ukraine). Rent payment is charged for extracted mineral resources (mineral raw materials) as defined by the Tax Code of Ukraine.

The obtained results of PID, together with other results of geological exploration, are used during geological-economic evaluation of reserves of mineral deposits and preparation of projects for construction of mining and processing enterprises.

After successful completion of pilot industrial development and obtaining all necessary permits and licenses, the phase of actual extraction of mineral resources begins. This stage involves practical implementation of the developed project and execution of extraction operations.

Legislative regulation of accounting and state registration of works and studies related to geological exploration of subsoil

The procedure for accounting of works and studies related to geological exploration of subsoil (hereinafter – WSGES) within the territory of Ukraine, its continental shelf and exclusive (maritime) economic zone is regulated by the Procedure for accounting of works and studies related to geological exploration of subsoil, approved by Order of the Ministry of Ecology and Natural Resources of Ukraine dated 14.06.2013 No. 262.

Accounting of WSGES is carried out based on results of completed WSGES through their analysis, systematization, generalization and storage.

Accounting of results of WSGES is carried out by the State Service of Geology and Subsoil on the basis of reporting geological materials, accounting cards of level of exploration, and location of contours of explored areas. The State Service of Geology and Subsoil also carries out state registration of WSGES.

Results of completed WSGES are set out in geological or scientific-research reports or in published geological maps, which after their approval are transferred for permanent storage to the State Scientific and Production Enterprise «GeoInform Ukraine».

The procedure for state registration of WSGES is carried out in accordance with the Procedure for state registration of works and studies related to geological exploration of subsoil, approved by Order of the Ministry of Ecology and Natural Resources of Ukraine dated 14.06.2013 No. 263 (hereinafter – Procedure No. 263).

State registration of works and studies related to geological exploration of subsoil (WSGES) is an official confirmation of the expediency of carrying out certain types and volumes of works aimed at increasing the completeness of geological, hydrogeological, engineering-geological, geophysical, ecological-geological and geochemical knowledge of subsoil.

The main purpose of state registration of WSGES is to prevent duplication of WSGES in the process of further study of the geological structure of subsoil, identification and evaluation of reserves and quality of mineral resources, and study of the environmental condition of the geological environment.

For the purpose of state registration, the contractor of WSGES submits an application in electronic form to the State Service of Geology and Subsoil. WSGES must be registered prior to the commencement of their performance and are subject to re-registration if changes occur in the data on the basis of which they were initially registered.

Thus, in the case of alienation of a special permit through conclusion of a sale and purchase agreement, WSGES are subject to re-registration, since as a result of the sale the contractor of works and studies has changed.

The main document on the basis of which WSGES are registered or re-registered is the List of WSGES works. After state registration of works and studies related to geological exploration of subsoil, the relevant information is entered into the electronic database.

The list of grounds for cancellation of state registration of WSGES is defined in paragraph 3.7 of Procedure No. 263, in particular: in the case of expiration or cancellation of the special permit for subsoil use, in the case of completion of WSGES, transfer to the State Service of Geology and Subsoil for storage of reporting materials based on results of WSGES, and in the case of approval of mineral reserves – protocol of the State Commission on Mineral Reserves.

Since a special permit for extraction of mineral resources (commercial development) is granted after conducting expert examination and evaluation of explored mineral reserves by the State Commission on Mineral Reserves, in order to commence industrial extraction of mineral resources on a subsoil plot that has not previously been studied and whose reserves have not been approved by the State Commission on Mineral Reserves, the subsoil user must obtain a special permit for geological exploration, conduct geological exploration, approve reserves in the State Commission on Mineral Reserves, and only after that obtain a special permit for extraction of mineral resources.

The legislator, by establishing the right to obtain a special permit for a part of a deposit, did not provide clear criteria for determining the conditions under which a part of a deposit is recognized as technically unsuitable for use under a special permit; therefore, in this part corruption risks may arise related to the adoption by the State Commission on

Mineral Reserves of an unlawful decision on granting a special permit for use of part of a deposit and reduction of the value of the special permit itself.

Restriction of access to secondary geological information that is state property is a corruption risk that creates non-transparent and corrupt conditions in the extractive industry, providing access to information only to a certain circle of persons, thereby eliminating fair competition and negatively affecting attraction of new investors who have experience in application of environmentally sound extraction technologies, the use of which may reduce negative environmental impact.

Since the process of pilot industrial development foresees extraction of mineral resources in the amount of five percent (for hydrocarbons – 10 percent) of reserves recorded in the State Balance of Mineral Reserves, the decision to conduct PID should be preceded by the stage of Environmental Impact Assessment, with mandatory public participation, which will make it possible to assess environmental risks prior to PID, as well as to prevent and minimize negative consequences for the environment.

The decision on conducting PID itself must be adopted based on the results of the Environmental Impact Assessment conclusion, since in the process of PID mineral resources will be extracted, although in limited quantities, and as a result this will affect environmental, geological, hydrological and other conditions on the respective subsoil plot, which will be disturbed.

By its legal nature, the stage of PID as a transitional stage between geological exploration and commercial development of a deposit is attractive for the subsoil user, since it allows extraction of part of mineral resources without a special permit for extraction, without conducting Environmental Impact Assessment, without land allocation and other permits, while such mineral resources may be of higher quality compared to other parts of the deposit. Thus, it is necessary to strengthen state control and supervision at the stage of PID in order to prevent abuse both by the subsoil user at this stage and by permitting authorities.



According to the Article 8 of the Code of Ukraine on Bowels a state examination and assessment of the reserve of natural resources⁵⁵ is under the Cabinet of Ministers of Ukraine authority.

The examination and reserve assessment are an important stage in obtaining special permit for natural resources use. It also aids to assess the reserve of mineral resources and improve development technology, decrease recycle cost and environmental impact.

The Article 45 of the Code of Ukraine on Bowels states that all minerals resources and their deposit and additional deposits discovered during mineral resources site development are the subject to state examination.

Mineral resources user may apply to use United Nation Framework Classification for Resources (UNFC), Comittee for Mineral Reserves International Reporting Standards (CRISCO), Petroleum Resources Management System (PRMS) and other international standards during state examination and assessment.

The Regulation on Order of State Examination and Assessment of Mineral Resources Reserves approved by the Cabinet of Ministers of Ukraine dated 22nd of December 1994 #865 establishes the order and terms of state examination and assessment of mineral resources deposit.

Sate examination and assessment of mineral resources is conducted by the State Commission of Ukraine on Mineral Resources Reserves. The Cabinet of Ministers of Ukraine is a constitutor of the Commission and appoints its Head.

Regulation on State Commission of Ukraine on Mineral Resources Reserves approved by the Cabinet of Ministers of Ukraine dated 10th of

⁵⁵ Mineral resources reserve (general) – mineral resource deposits discovered and estimated at the place of their deposition according to geological study of discovered (identified) deposits of mineral resources.

November 2000 #1689 establishes the Commission as an institution under Ukraine Geological Survey. The Commission carries on scientific and technologic activity of examination of mineral materials and studying and use of mineral resources and of assessment of mineral resources reserves. Said activity is carried on under order of respective executive authorities.

Main purpose of the Commission is an establishment of quality requirements for mineral resources for an estimation of mineral resources reserves and their preparedness for industrial development.

The Commission's conclusions on quantity and quality of mineral resources, their industrial value and the scope of their geological and economical extent is the ground to putting them on the state list of mineral resources reserves.

State examination and assessment of mineral resources reserve is conducted for the following purposes:

- objective assessment of the raw mineral resources of Ukraine according to unified scientific criteria;
- obtaining accurate data on mineral resources reserves and their meeting criteria for planned use;
- creating conditions for the fullest, economically justified and complex use of deposits' reserve while observing mineral resources and environmental protection requirements;
- comparative assessment of quality and quantity metrics of mineral resources reserves, their geographic, economic, mining, geologic, hydrologic and other conditions for determining their actual industrial value;
- provision of unified approach to evaluation of technic, economic and financial criteria of economic activity, related to mineral resources mining at specific plot;
- use of abovementioned evaluation for investment planning and taxing.

The main goals of state examination and assessment of mineral resources reserves are as follows:

- evaluation of verifiable mineral resources reserves basing on analysis of geological study of mineral resources on compliance to forming

and deposit of mineral resources, their composition and technological proprieties, mining, geological, hydrological and other conditions;

- determining quality requirements for mineral raw material for evaluation of deposit reserves, taking into account rational use of all mineral resources and their valuable components;

- determining quality and quantity of mineral resources reserves and their components, degree of their study and readiness to industrial development;

- evaluation of industrial value of mineral resources reserves under condition of its full economically rational and complex development and use based on modern industrial technologies;

- evaluation of correspondence of components negatively impacting environment and health during development, processing and use of mineral resources and also during storage of production waste to environmental standard, norms, limits, sanitary norms requirements.

The following are subjects to State examination and assessment:

- mineral resources reserve of all mineral resources plots including technogenic ones;

- mineral resources reserve additionally discovered during plot development;

- reserves left after closing down mining plants.

State examination and assessment of mineral resources reserves is conducted on the ground of reports on geological study of mineral resources deposits, reserve estimation and technic and economic estimation of their industrial value as well as geospatial data on mineral resources location (hereafter – geo-economic assessment).

If needed the Commission can run a check of deposit geo-economic assessment directly at site. The Regulation doesn't specify condition for the check. This violate legal certainty principle and gives the Commission the right to determine its own action.

Geo-economic evaluation is an intermittent analysis of results of every stage of geological and technic and economic study of reserves and resources of specific plot aimed at determining and/or changing industrial value of the plot. There are GEE-1 – detailed, GEE-2 – preliminary, GEE-3 – initial geo-economic assessment. They are determined by the Classification of reserves and mineral resources of State Bowel Fund approved by the Regulation of the Cabinet of Ministers of Ukraine dated

5th of May 1997 No. 432 (revised by the Cabinet of Ministers of Ukraine dated 25th of September 2025 No. 1197).

The following are the subjects to State examination: materials of detailed, preliminary or initial assessment of reserves and mineral resources, materials of technic and economic substantiation of quality requirements for raw mineral material; oil extraction, natural gas and condensate coefficients, project of industrial deposit development, reconstruction and closing down of mining and refining facilities; advisability of further development or excluding deposits from national list of mineral resources reserves.

According to the level of study of the deposit state examination can be carried out based on materials of geo-economic assessment of:

- initially assessed plots;
- preliminary assessed mineral resources deposits;
- mineral resources reserves ready for industrial development;
- mineral resources deposits in active use.

Materials of geo-economic assessment must include:

- geological composition characteristics of mineral resources, their technological properties, mining and geological, hydrological and other conditions to the extent sufficient for making relevant project decisions on mode and system of development and complex refinement of mineral resources and establishing margin criteria for quality requirements;

- technic and economic substantiation of quality requirements for evaluation of mineral resources reserves to ensure the fullest, economically rational and complex excavation of main and additional resources and other valuable components by using modern industrial technologies of extraction and refinement of raw mineral materials while in compliance with environmental legislation;

- method, tests and deposit evaluation results characteristics;
- estimated economic assessment of cumulative effect on plot use by one or several criteria of quality requirements with estimated revenue of economic activity of a mining facility in amount sufficient for making investment decision;

- paperwork attesting the right for mineral resources use.

Geo-economic assessment materials content, drafting and order of submitting are stipulated by the Ministry of Economy.

Materials of geo-economic assessment can be approved By the State Commission on mineral resources reserves only in case if last data submitted by users holding Special permit for mineral resources use for geological study and development of deposits of mineral resources.

The evaluation of industrial value of each plot of the mineral resources deposits is based on quality requirements for raw material which constitute corpus of requirements for quality and quantity of mineral resources, mining and geological and other conditions of deposits use (the Article 45 of the Code of Bowels).

Quality requirements are established taking into account rational use of all mineral resources and present valuable components and are subject to state examination carried on by the Commission to establish rational direction of mineral resources use. The order of quality requirements for mineral resources determination is established by the Ministry of Economy.

Unified order of determining and substantiation of criteria and quality requirements parameters for raw mineral material for evaluation of mineral resources deposit and evaluation of criteria of geo-economic deposits assessment submitted to state examination and assessment is determined by the Regulation on the order of development and substantiation of quality requirements for raw mineral material for the evaluation of the mineral resources reserves approved by the Order of the State Commission of Ukraine on mineral resources reserves dated 07.12.2005, No. 300.

Technic and economic substantiation of quality requirement criteria for the evaluation of mineral resources deposit is made for every particular deposit.

According to the stage of geological study and stage of readiness to industrial development different quality requirements (preliminary, temporary and operational) may be applied.

Materials of technical and economic substantiation of quality requirements for evaluation of mineral resources deposit are drafted by specialized project and scientific institutions and geo-economic departments of factories, other enterprises able to provide qualified execution.

The order of the working out of materials of technic and economic substantiation of quality requirements for raw mineral material, and carrying on of geo-economic assessment of mineral resources deposit is established by the Commission.

Mineral resources reserves are subjects to evaluation and registration according to the Classification of deposits and reserves of mineral resources of state fund of bowels, approved by the Regulation of the Cabinet of Ministers of Ukraine dated 5th of May 1997, No. 432 (revised by the Cabinet of Ministers of Ukraine dated 25th of September 2025, No. 1197).

The Classification of deposits and reserves of mineral resources of state fund of bowels (hereafter – the Classification) establishes unified calculation principles of geo-economic assessment, state register of resources use according to their socio-economic and industrial value.

THE CLASSIFICATION of state bowel fund mineral resources reserve		
By socio-economic and industrial value	By preparedness development	By geological study stage
Balance (E1) – mineral resources reserves of a deposit with proved profitability at the moment of geo-economic assessment according to technical and economical estimation and/or materials of financial report. The profitability coefficient of mining plant (estimated or actual) is sufficient for economically effective development of mineral resources at the deposit plot.	First category (F1) – including mineral resources reserve under development or operation or sufficiently complete detailed study, proving technical plausibility of development and operation and is divided into following subcategories: – reserves developed at the moment (F1.1); – reserves off which project of industrial development was approved; or capital investments made	Explored reserves (G1) – reserves with fully studied of quality, quantity, technologic properties, including technologic schemes, mining and geological, hydrologic conditions sufficient for construction planning of mining facilities. The studied reserves are the base for drafting and development of the plot (deposit).

	(F1.2); – reserves approved for industrial development with study confirmed technical plausibility (F1.3).	
Balance reserves are classified: – into mining (E1.1) – profitability coefficient ⁵⁶ of production activity of a mining facility, confirmed by the Commission is sufficient for a mining facility capital retention. The capital is defined by the accounting rules, under condition of rational use of technical equipment and in compliance with environmental provisions, and provisions on mineral resources use; – concessionary (E1.2) – efficiency of mining and use mineral resources by a projected mining facility. The efficiency is determined by the Commission and is only plausible under condition of granting to mineral resources user additional subvention or other kinds of state support by means of state or local budget ⁵⁷		
Conditionally balance (E2) – reserves of questionable effi-	Second category (F2) – includes reserves of	Preliminary surveyed reserves – (G2) –

⁵⁶ **Profitability coefficient** – is a correlation between financial result of operational activity and productional value including administrative and distribution expences.

⁵⁷ <https://nadra.info/2022/08/preferential-subs-who-in-ukraine-develops-subsidized-reserves-of-minerals/>

ciency of development and use at the time of assessment; reserves that fully conform to efficiency criteria but cannot be developed at a time of assessment for various reasons.	mineral resources substantiated for the development, development pending, stopped or is unprofitable and is subcategorized as follows: – subcategory of reserves substantiated for development (F2.1); – subcategory of reserves stopped for development (F2.2); – subcategory of reserves deemed unprofitable (F2.3).	mineral resources reserves with all their properties and mining conditions studied fully enough for determination of industrial value of the plot. Preliminary reserves (G2) are the base for further survey or scientific or industrial development of a deposit.
Off-balance (E3) – mineral resources deposit from a plot at the moment of geo-economic assessment according to technical and economical estimation and/or materials of financial report of production activity of a mining facility, confirmed by the Commission is insufficient for a mining facility capital retention. The capital is defined by the accounting rules, for such a plot.	Third category (F3) – includes reserves and resources whose development plausibility is not determined for the lack of data.	
Industrial value undetermined (E4) – mineral resources reserves without geological and economic assessment or only primary assessment was conducted so their industrial value is not determined.	Fourth category (F4) – includes remainder (additional) of reserves.	

CLASSIFICATION of reserves of mineral resources of the State Bowel Fund	
By the degree of geological study and reliability:	
Perspective resources (G3) – an amount of mineral resources assessed as result of geological, geophysical, geochemical study of the plot in the area of known industrial value of particular geological and industrial type. Perspective resources take into account possibility of discovery new deposits of the same kind. Perspective resources are the base for geo-economic substantiation for study and survey.	Forecast resources (G4) – an amount of mineral resources taking into account potential possibility of forming plots of particular geological and industrial kind. Quantitative estimation of forecast resources is carried out based off of supposed criteria similarly to production areas with discovered deposits of same geo-industrial kind. Forecast resources (G4) are a base for substantiation of regional and forecast and geological works.

Mineral resources reserves are estimated as a result of geological survey or deposit development. Separate estimation is made for different rate of socioeconomic and industrial value, of the level of project detailisation, of technological study and development readiness, of the level of geological study and verification.

State balance includes reserves of all mineral and perspective hydrocarbon resources. New deposits are included into state balance per decision of the State Commission of Ukraine on Mineral Resources Reserves on quantity, industrial value and the level of reserves study and verification.

Depending on the level of availability for development State examination may conclude with approval or approbation of reserves and/or resources of:

- resources plot ready for geological study as a result of primary geological and economical assessment;
- deposits ready for geological study as a result of primary geological and economical assessment;
- deposits appointed for drafting and construction of new or extension of running objects as a result of detailed geological and economical assessment.

Article 16 of the Code of Bowels of Ukraine states that Special Permit for mineral resources development is granted after examination and assessment of surveyed deposits or approbation of forecast (perspective) mineral resources reserves by the State Commission of Ukraine on Mineral Resources Reserves under condition of further approval of these reserves.

Reserves approbation is a procedure of their preliminary approval by the Commission based on geological survey materials usually surveyed back in time of USSR. State balance reserves of studied or reserves of website of the State Geological Fund «Geoinform Ukraine» or other interactive maps deposits could be approbated.

The State Geological Fund «Geoinform Ukraine» is a state owned institution and is responsible for preservation of results and geological studies of mineral resources. The Order of Handling of Geological information is approved of the Regulation of the Cabinet of Ministers of Ukraine dated 7th of November 2018, No. 939.

Considering current war state «Geoinform» temporarily closed access to public registries and data bases on its website, at the same time the Institution grants chargeable services listed at the website¹.

It is important to note that only mineral resources user with Special Permit for use of mineral resources for geological study, including industrial development can approve the reserves by approbation. Approval of reserves as a result of approbation without Special Permit may result in invalidation of the Protocol of the Commission in court. Specific examples of invalidation of 70 special permits by the Prosecutor Office can be found at the website nadra.info².

Records of geological and economic assessment of reserves of mineral resources are submitted to the Commission by the bowel user or authorized person. After receiving records of geological and economic assessment the Commission makes agreements with users of mineral resources to carry on state examination and assessment of mineral resources and implements them during stated period.

Geologic and economic assessment records may be submitted to the Commission for primary, secondary and additional examination.

¹ <https://geoinf.kiev.ua/wp/index.html>

² <https://nadra.info/2024/01/hunting-for-approbation-the-prosecutors-office-massively-appeals-special-permits-granted-in-2016-2020/>

Primary state examination is carried on at deposits where they mineral resources reserves are submitted to the Commission approval for the first time.

Secondary examination is carried at deposits with reserves of mineral resources approved by the Commission earlier, but as a result of further survey, development or change of standards their amount is substantially changed. Secondary state examination and assessment if standards of quantity or quality of mineral resources, their refinement technology has been reduced by 20% or increased by more than 50%.

Secondary state examination is carried if additional modes of use are deemed possible, or additional reserves and components or other significant geological and economic conditions are discovered.

Experts of the Commission have the following duties:

- carrying on the survey, evaluation and analysis (state examination) of submitted data of geologic and economic assessment of mineral resources deposit, preparation of conclusions on completeness and quality of geologic survey, verification mineral resources reserves and their availability for full economic, rational and complex use, conformability of planned or current modes of development and refinement of mineral resource, and different modes of their use with current environmental legislation;

- evaluation of quantity and quality of mineral resources reserves, their mining, hydro-geological and other conditions in a deposit; technological layout of industrial development, technical and economic criteria of industrial production and financial outcomes of mining production sales.

Examination findings are divided into general and specific.

General findings include expert conclusions summarizing examination results and analysis of data of geologic and economic assessment of state examination object in general.

Specific findings include expert conclusions summarizing examination results and analysis of data of specific chapter, issue or type of survey of geo-economic assessment of state examination object (geophysical, hydrogeological, environmental, technological, mining, economic results, etc.).

Specific findings include expert conclusions, generalizing results of documentation of object's geo-economic evaluation formal conformity

to provisions of the Regulation, the Classification of state bowel fund mineral resources reserve, instructions of the Commission and other relevance legislation.

Expert findings are reviewed at the preliminary session of the Commission to work out decision drafts, additional documents, data, calculation, expert conclusions list essential for final conclusion prepared. Decisions of the Commission on state examination at sessions are recorded in Protocols. These protocols on state examination and assessment of mineral resources reserves are included to unified state digital geo-informational system of bowels use as stated in Article 5-1 Code of Ukraine on Bowels.

The Commission may abstain from evaluation and assessment of mineral resources and return all submitted documents to an applicant under following conditions:

- submitted documentation and materials of geo-economic assessment don't allow for proper evaluation of quantity and quality of mineral resources reserves, their industrial value, mining, geological and other conditions of deposit;
- when composition and substance of data are not in conformity with relevant legislation.

The Commission analyses state balance of mineral resources and issues recommendations for bowels users for applying for second or primary state examination documentation on geo-economic assessment of relevant deposits of mineral resources.

Cost of state examination and assessment is estimated according to the Order, approved by the Head of the Commission on Natural Resources Reserves of Ukraine dated 2nd of August 196, No. 29.

Approval by the Commission is a foundation for mineral resources listing in state registry and in State Bowel Fund.

State Bowel Fund is constituted of mineral resources deposits, including technogenic with reserves assessed as industrial. State registry of deposits is a system of acquiring, processing and storage of data of geological and mining survey. All discovered deposits at the territory of Ukraine are to be listed in national inventory their reserves volume, survey status, development notwithstanding. The base for including depos-

it to national inventory is a passport of deposit of mineral resources deposit.

State inventory is carried out by Ukrainian Geological Survey which annually prepares analytical report on State Fund statistics. The Order of state registry of deposits, reserves and findings of mineral resources is approved by the Regulation of the Cabinet of Ministers of Ukraine dated 31st of January 1995, No. 75.

State examination and assessment of mineral resources reserves may be carried out by bowel user while already using mineral resources with valid Special Permit under following conditions:

- discovery of new volume of mineral resources including increasing of deposit of the fossil named in the permit while carrying out development at the allocated plot;

- discovery in the process of activity connected with development of mineral resources, other fossil not indicated in the Permit if bowel user intends to develop it (industrial development);

- change of number of water-intake facilities and volume of extracted groundwaters indicated in the Permit;

- change in type of the fossil or change in mode of its use in the Permit (constitutes a ground for state examination and assessment of earlier discovered deposits). Conclusions of secondary state examination and assessment are automatically included to Unified State Digital Geo-informational System.

Changes based off of the conclusions of state examination and assessment are included to the special permit. Changes are made by Ukrainian Geological Survey by the application of bowel user.

Following beforementioned conditions when changes are made because of discovery of new volume of the fossil including its increase, approved by the Protocol of the Commission, owner of the special permit pays a fee which equals 100% of the sale price at the auction for the permit for development of the fossil for its newly discovered volume (Article 34 Code of Ukraine on Bowels).

Since the beginning of war in Ukraine planned and unplanned state enforcement activities are on hold Ukrainian Geological Survey as controlling authority doesn't carry out routine check of bowels users on the issue of «data completeness and probability on quality and volume of

primary and supplementary mineral resources». Under these conditions a disingenuous user who discovered additional volume of the fossil may cover the fact to not pay a fee and may not disclose fossil volume in reports.

As a real life example one mining company purposefully was bringing down the value of produced fossil showing wrong figures in financial report. The company sold crushed stone and quarystone as «mining waste» to an affiliated firm. Sales were made at lowered prices. Then the company was selling the same products by market price. Thus avoiding paying UAH12,4 millions in rent payments³.

So hold on of state control measures carries great risks for mining branch of economy of Ukraine, in part of incoming payments to the budget, unrecorded mining of mineral resources, unregulated bowels use, violation of legislation with possible negative impact on environment.

Aside from abovementioned points the importance of state examination and assessment cannot be overlooked since conclusions of state examination and assessment carried out by the Commission are the ground for estimation of primary sale price at the auction of the Special Permit; for bowels use and assignment of the fee for the permit for bowels use without auction under Article 34 Part 1 of the Code of Ukraine on Bowels, and according to protocols of the Commission; estimation of production volume of mining product calculated under Methodology of estimation of primary sale price at auction (digital tender) on the permit for bowels use approved by the Regulation of the Cabinet of Ministers of Ukraine dated 15th of October 2004, No. 1374.

As the case stands state should institute by its legislation the obligation to carry out state examination of assessment of mineral resources reserves with obligatory use of the United Nations Framework Classification for Resources (UNFC-2009), and classification of the Committee for Mineral Reserves International Reporting Standards (CRIRSCO), Petroleum Resources Management System (PRMS) and other international standards, for ensuring of the correct study and compliance with international legislation.

³ <https://esbu.gov.ua/news/beb-povidomylo-pro-pidozru-kerivnytstvu-kompanii-v-ukhylenni-vid-splaty-124-mln-hrn-rentnykh-platezhiv>



Mining allocation – is a part of bowels, allocated for bowels user for industrial development of deposits of mineral resources.

Starting at 28.03.2023 the duty of maintenance of mining allocation is put solely on subterranean mining facilities. The Law of Ukraine «On Changes Made to Some Legislative Acts of Ukraine on Improvement of Bowels Use» dated 01.12.2022, No. 2805-IX negates the duty of mining allocation maintenance for open quarries or boreholes.

Mining allocation for deposit development is given under condition of following examination and assessment by the Commission. The area of mining allocation is estimated by the outline of its reserves assessed by the Commission.

Mining allocation is granted under condition of obtaining valid Special Permit by its user, and by obtaining a Project of Development of deposit development approved by the Labour Service. The Project describes drafting, construction and putting into the production of the deposit.

Land plot allocation for bowels use and underground mining is carried out after granting of the mining allocation.

Bowels use beyond underground mining allocations is forbidden. Mining company cannot start any mining activity without obtaining act of mining allocation first (Article 24 of the Mining Law of Ukraine).

Mining allocation is granted by the State Service of Labour of Ukraine (Labour Service) and is confirmed with the Act of Mining Allocation. The Act of Mining Allocation validity period must correspond that of the Special Permit and cannot exceed it.

The Act of Mining Allocation approves deposit area granted by the Special Permit (technical limits), and induces the following obligations for economic agent:

- provision of complete geologic study of mining, hydro geologic and other conditions of bowels use at the mining allocation area; rational and complex use and protection of bowels;
- provision of safety of personnel, property, facilities and environment from negative impact of mining activity;
- provision of recultivation of land plot disturbed during bowels use for its further use in social production;
- provision of constant supervision on landslides, deformation of existing ground facilities and objects, state of mining excavation, adherence to established area of waste disposal determined by the mining allocation, production waste and wastewater;
- awareness of companies' owners using the mining allocation on duration of their mining activity and coordination of measures of protection from potentially harmful mining activity;
- compliance with other demands on bowels use provided in legislation.

During the procedure of mining allocation granting the following issues are addressed:

- correct division of the deposit of mineral resources into mining allocations preventing leaving out less valuable ores unavailable for self-maintained development;
- compliance with safety directions during mining and blasting operations in the process of development of deposit and while bowels use for other purposes not linked to mineral resources extraction;
- prevention of danger to people, property and environment.

The procedure of granting of mining allocations is described in the Regulation of the Cabinet of Ministers of Ukraine dated 27th of January 1995, No. 59, approving the procedure of mining allocations granting for underground mining facilities (mines and ore).

A mine is a mining facility for underground excavation of mineral resources (coal, salts, etc.). an ore is a mining facility for underground excavation of metallic and nonmetallic minerals (Article 1 of the Mining Law of Ukraine).

The scope of the Regulation No. 59 is extended to bowels users, including investors, who concluded an agreement on production distribution. Granting the mining allocations for investors who concluded an

agreement on production distribution is carried out basing off of an agreement on production distribution.

At the same time the state provides investors and their representative offices with acts of mining allocation according to p. 3, Article 4 of the Law of Ukraine «On the Agreement of Production Distribution».

For newly established companies mining allocations are to be granted before construction of mining facility. Granting of additional mining allocations to the existing mining allocation is drafted as new mining allocation.

The construction of new or enlargement or reconstruction of existing underground and open mining facilities, the order of open, prepared for excavation and classification of mining activity and mining виробок of mining companies of Ukraine are carried out according to the Order approved by the Ministry of Industrial Policy of Ukraine dated 07.05.2004, No. 221.

Mining allocation features

1. The mining allocation for the deposit of mineral resources development is granted taking into account outlines of the area of bowels use object stated in the special permit.

2. Any activity on bowels use at the mining allocation may be carried out only upon permission of bowels user (investor) to whom it was granted.

3. The state may grant mining allocations of big deposits to two or more companies or citizens.

4. Mining allocations for different types of mineral resources deposited at the same area are granted separately for each deposit type.

5. It is forbidden to grant a mining allocation leaving out ore bodies, veins and deposits unavailable for separate excavation.

6. The order of deposits excavation must provide full, complete and economically efficient extraction of mineral resources while complying to bowels protection and environmental legislation.

7. In the case of mining facility conservation for period extending five years or its dissolution the act of mining allocation must be returned to the Labour Service.

The order of applying and approval of applications for mining allocation

Mining allocations are granted by the Labour Service after obligatory approval of the application for mining allocation by the relevant office of the Labour Service.

Bowels user submits an application to the administrator of the Center of Administrative Services or to the local office of the Labour Service.

According to the Article 17 of the Code of Bowels of Ukraine the Application must include the following documents:

- 1) an application with the name of the person who applies for mining allocation, location of the deposit and the purpose of mining allocation;
- 2) project of mining allocation;
- 3) consent of relevant village, town and city councils, councils of joint territorial communities and executive bodies if mining allocations are located under buildings, settlements, water sources, water bodies, natural reserves, historical sites, culture or art sites, objects with special or other purpose as to the bowels use on their territory. In other instances consent is not demanded nor submitted.

Before granting an act of mining allocation Labour Service considers and check the following:

- correctness and substantiation of defining mining allocation area taking into account provisions of current legislation on bowels;
- compliance of the project with provisions of this Regulation and complete paperwork submitted with the project;
- the project of mining facility with complete and substantiated description of project decisions on rationality and complexity of bowels use and provision of safety of people, property, constructions, buildings and environment;
- issues on correct division of the deposit into separate mining allocations aiming at not leaving out less valuable deposits of mineral resources and available for separate development; safety measures during mining and blasting operations while developing the deposit and other operations not connected to the mining of mineral resources; prevention of danger for people, property and environment.

The Labour Service grants the mining allocation in 21 day since accepting an application and enclosed documents or refuses with proper justification of refusal.

The Labour Service refuses to grant mining allocation on the following basis (p. 10, Article 17 of the Code of Ukraine on Bowels):

- user submits incomplete set of documents or submits them with a failure to comply to the application procedure;
- user submits documents improperly drawn up documents or documents contain discrepancies with the legislation of Ukraine.

After approving of application for mining allocation for underground development of the deposit of mineral resources by the local office of the Labour Service the application is submitted to the Labour Service for final approval and granting of an act for mining allocation.

The order of granting (refusal to grant) of mining allocation and application form for mining allocation is approved by the Cabinet of Ministers of Ukraine including provisions of the Law of Ukraine On Administrative Procedure and this Code.

Addendum 2 of the Regulation No. 59 lists requirements for the project of mining allocation added to the application for mining allocation.

Projects of mining allocation are drafted by specialized project organizations or specialized subdivisions of mining companies, sole proprietors with more than one staff member suitably qualified (specialization 184 «Mining» – «Mine Surveying», «Development of Mineral Deposits»).

Project of mining allocation consists of explanatory notes with addenda and graphic materials. Explanatory notes include:

- general information on the area of mining allocation its geographical and administrative location, area, agricultural lands, rivers, lakes and other water bodies, separate buildings, and on land categories (cadastral number, if available) according to land legislation;
- short geological description of land plot of mining allocation and adjacent territory namely data on geological structure, mining, technical and hydrological conditions and extent of their study;
- short geological description of existing deposit of mineral resources (its volume and elements of ore run, veins, etc.), mining engineering and hydro-geological conditions of excavation;

- substantiation and estimation of outlines and size of mining allocation in State referential coordinate system YCK-2000;
- extent of deposit exploration: its volume, quality, category and composition of surveyed and estimated mineral resources, estimated at site resources, estimated volume at date of obtaining of the mining allocation (according to form 5-ГР);
- activities of complex use of raw material in the process of its extraction and refinement;
- recommendation of the Commission according to the Protocol of assessment of reserves;
- main project decisions on technology of deposit development.

Visual materials consist of a copy of topographical plan of area in the limits of the mining allocation, copies of geological (structural) maps and profiles, hypsographic plans (plans of reserves evaluation) drafted in accordance with instructions and methodologic directions.

A copy of topography plan shows surface topography and points of geodetic control grid, outlines of forest and agriculture lands, borders of land use and borders of settlements, mining sites, water bodies, constructions, roads, above- and underground utility lines, objects of nature-preservation fund, cultural heritage sites, outlines of mineral resource deposits and adjacent mining allocations, bowels sites allocated for construction and use of underground facilities not related to development of natural resources or used-on mining sites of active or closed (removed from operation) mining facilities, and outlines of the project allocation.

The project of mining allocation is completed with the following addenda:

- a copy of special permit on bowels use;
- a copy of protocol on approval of project of deposit development;
- an excerpt from the protocol of the session of the Commission on mineral resources assessment (their volume by categories);
- a letter from local governance bodies confirming their knowledge on borders of mining allocation for bowels use on their territory.

Reissuance of mining allocation

In case of change of bowels user, reorganization of the company or prolongation of the special permit for bowels use without change of the bowels use object's borders the act of granting of mining allocation has to be reissued.

For the reissuing of the mining allocation new user by the special permit during 90 calendar days from the date of change must submit the application for mining allocation to the administrator of the Center of Administrative Services (locally for object of bowels use) or to the authority issuing mining allocation.

Grounds for refusal to reissuance are as follows:

- 1) incomplete documentation for mining allocation reissuance;
- 2) failure to properly prepare documentation for mining allocation reissuance and/or citing incorrect data.

Validity period of reissued mining allocation cannot exceed that of original one.

Decision on refusal in reissuance of mining allocation is made observing proper procedure upholding one's right for administrative procedure provided by the Law of Ukraine «On Administrative Procedure».

The Order of Maintaining, Keeping and Access to Information of the Unified State Digital Geo-informational System of Bowels Use approved by the Cabinet of Ministers of Ukraine dated 19.05.2023, No. 511 provides that information on issued mining allocations may be included to the Unified State Digital Geo-informational System by the bowels users.

The list of reasons for refusal for reissuance of mining allocation is general (abstract) and doesn't provide clear provisions to make reissuance of mining allocation impossible.

The main goal of mining allocation granting is prevention of danger to people and environment. Thus, these are the issues the Labour Service checks first. If the Labour Service discovers conditions of evident danger this will constitute the ground for refusal in mining allocation granting.

Insufficient legislative definition of reasons for refusal gives the Labour Service too much discretionary power in the issues refusal to grant mining allocation and allows corruption risks to rise. In real practice

bowels user has to negotiate unrestricted issuance of the Act of Mining Allocation.

Thus, there is need to remove the risks and to make changes to the Code on Bowels and broaden and define the reasons for refusal of mining allocation granting.

P. 23 of the Regulation No. 59 states that for granting or reissuance of mining allocation, bowels user submits an application to the Administrator of the Center of Administrative Services or local office of the Labour Service. Existing alternative of applying directly to local office of the Labour Service creates propensity for corruption when bowels user has direct access to authority.

There is need to introduce changes to the Regulation to eliminate abovementioned propensity for corruption and establish principle of automatic distribution of materials and exterritoriality.

P. 10 of the Regulation No. 59 states that mining allocation under the area with facilities, constructions, settlements, water sources, water bodies, object of nature-preservation fund, objects of historical, cultural and art heritage, objects of special and other use can be granted with the consent of relative local authorities, the consent must be submitted with the application for mining allocation.

Bowels user also attaches to the project of mining allocation submitted with the application a letter from local governance on their obtaining information on borders of mining allocation for bowels use on their territory. Thus, with the letter the relative authorities confirms its knowledge on borders of mining allocation and list of plots, but there is no obligation of obtaining consent from owners of current land users of the land plots included in the area of mining allocation.

It is worth noting that before 12.06.2019 the Regulation on the Order of Mining allocation granting (redaction dated 04.03.2016) obliged to obtain consent of land owner with granting of mining allocation at all times.

Former procedure ensured observing legal rights and interests of the land owners in the process of granting of mining allocation.

The exempt from the Regulation to obtain consent of legal land owner or user and obligation to obtain consent only from local governance

eliminated the right of private individuals for taking part in the process of mining allocation granting.

Whereas allocation of land plots for bowels use by underground development is carried out after mining allocation, there is need to establish a procedure of approval of land plots in private use before granting an Act of mining allocation. Such approval may also be issued at the stage of Special permit tender auction.



Land matters arising from use of bowels deposit are regulated by bowels and land use legislation particularly Land Code of Ukraine. Land Code establishes legal ways of obtaining rights for land plots for bowels use, the order of change of intended purpose and terms of use of the plots, rights of land owners and land users who are bowels users, the order of removal of fertile soil layer.

Land legislation in force is based on principles of rational use and land protection and prioritization of environment protection.

Main principles of land use in Ukraine are as follows: maintaining of law and provision of scientifically based distribution of land resources among different branches of economy with the main goal of establishing favourable natural environment.

State Service of Geodesy, Cartography and Cadastre of Ukraine (hereafter State Service of Geodesy) organizes and executes state control over use and protection of land, namely adhering to rules of removal, preservation and use of fertile soil layer during mining and survey works associated with disturbance of soil and over timely recultivation of disturbed land.

Bowels use is closely connected with land plot. A land is essential at every stage of bowels use: boring and arrangement of boreholes, mine construction, quarry excavation, construction and placement of facilities for bowels use, etc.

Owners of special permit for use of oil-and-gas-bearing deposit receive land plots for construction, placement and use of oil-and-gas-extraction objects and deposit maintenance.

Proper paper work for land is an important and essential stage in implementing bowels use project. Bowels user cannot start to excavate mineral resources without proper documentation, land papers and allocation for land activity.

If the documentation isn't in order all bowels use rights may be temporarily banned (stopped) by suspending special permit. The suspension is carried out by State Service of Geodesy as a result of state supervision (control) measures (Art. 57 of the Code on Bowels of Ukraine). *The specifics of State control measures by State Service of Geodesy and other control bodies is described in detail in the State Control chapter of this handbook.*

The same applies to an oil-and-gas-bearing deposit user who cannot start work without proper paperwork. Failure to comply is a ground to suspension of special permit for oil-and-gas-bearing deposit (Art. 26 of the Law of Ukraine «On Oil and Gas»).

Bowels use can only be carried out at land of industrial purpose with obligatory establishment of land plot use category e.g.: for placement an running of main, auxiliary and subsidiary constructions and facilities of industrial, mining companies; placement and construction of a quarry depending on particular form of bowels use. Industrial land may be owned by state, communities and private individuals.

Land user is obliged to use land plot according to its main purpose and comply with its legal status. Land user is obliged to restore land plot to the state sufficient for its further public use if it is deteriorating as a result of its use.

As of today special permit can be obtained at tender auction or without tender auction. If special permit is bought at auction the lot of bowels plot doesn't include paperwork for land, there is no land plot allocation for bowels use. Formalization of land title is permit's owner responsibility, who won at the auction and gained the right for bowels use. The same goes for bowels user who obtained special permit out of auction.

Granting of land plots for bowels use purposes is carried out after formalization of land title, after special permit obtaining and restoration of land according to draft project of land management at used-up areas in established time (p. 2 art. 18 of the Code on Bowels of Ukraine, p. 4 art. 66 of the Land Code of Ukraine).

As to development of mineral resources deposits of local importance, local communities granting land plot simultaneously grant bowels use (art 18 of the Code on Bowels of Ukraine).

Article 18-1 of the Code on Bowels of Ukraine provides that authorized state body after application of the State Service of Geodesy approves before the auction a list of land plots within bowels deposit to be transferred to the winner of tender auction with the purpose of bowels use if these land plots are under state or community ownership and at the time of tender auction *constitute an object of civil rights (registered with defined borders)*.

In case these plots are not defined, have no registration information in the State Land Cadastre and are not indicated at the cadastre map, *the law doesn't oblige the steward of relative land to arrange the plots before an auction*.

It would be advisable to put an obligation on relative authorities after application of the State Service of Geodesy to arrange and approve the borders of the land plots for an auction by drafting technical paperwork on inventory accounting (hereafter – technical documentation), essential for bowels use. According to Art. 57 of the Law of Ukraine «On Land Management» the relevant technical documentation is drafted at the decision of the land owner (manager). The technical documentation includes a list of land plots in profile with land categories and grounds, and a list of restriction in use. *Thus land status and its restrictions (if any) would be clear at an early stage before transferring rights to bowels user*.

Bowels user would get additional guarantees that land in question is not a part of natural reserve fund or under other restricted kind of use, if land borders of state and communal ownership would be defined and listed in the auction paperwork beforehand. Public may also exercise their right for participation in decision making at this stage since access to the documentation and information would be included to auction documentation.

Cadastre map of Ukraine (access to which since due to the war in Ukraine) *shows the layers of natural-reserved cadastre*, which are informational but could serve as grounds for denial in registration of land plot in the layer of natural-reserve cadastre, if its intended purpose is different.

Thus the body authorized to manage land, by the application of the State Service of Geodesy, is obliged to ensure forming of land plots, to draft technical documentation of land management on listing land plot

with obligatory list of land plots by category and grounds and related use restrictions. This documentation would serve as a ground for adding information on formed land plots to the State Land Cadastre.

If land plots of state and communal ownership are listed as land plots within area transferred for bowels use purpose, management of said land plots is carried out with following *distinctions (encumbrances)*:

1) period of validity can be extended only if they would not be transferred to bowels user;

2) land plots cannot be given into ownership;

3) land plots cannot be transferred into permanent use to anyone except bowels user;

4) land plots can be leased on terms of emphyteusis or superfition only for the duration before transferring of land plot to bowels user;

5) an easment couldn't be establish at the land plot disabling a possibility of land plot use by a bowels user after receiving of the land plot in use.

According to the law these encumbrances are valid during period stated by related authority but not more then five years and are subjects to state registration by the decision of the same authority.

At present there are instances of issuing of special permits for bowels use at lands of nature-preservation fund. In these case bowels use cannot be carried out legally. Bowels user after purchase of special permit and legalizing his rights for that land gets to know that his land plot is «problematic». The cause of this is *obsolete and old data on coordinates of land plot included in auction paperwork, not matching updated information of State Cadastre Centre*. This negative turn may push bowels user to take unlawful actions, to conspire with officials to somehow get around restrictions and get the land right.

*Official authorities authorized to manage land that could
be allocated for the purpose oof bowels use*

The transfer of land rights (ownership or use) is carried out by relative executive authorities and local self-governance according to the art. 122 of the Code on Land of Ukraine taking into consideration particularities established in p. 23 Chapter X of the Code on Land of Ukraine.

Village, town, city councils transfer ownership right to use of land within their limits for all purposes, bowels use included (p. 1. Art. 122 of the Code on Land of Ukraine). All lands outside settlements but still within settlement limits are deemed as *communal property of that settlement*. The deal is mostly about land plots unformed in State Cadastre Centre (related Regulation is in force since 27.05.2021) p. 23 Chapter X of the Code on Land of Ukraine.

The following lands are not communal property:

- land used by state authorities, state enterprises, offices, organisations with the right of perpetual use;
- defense lands;
- environmental and forest land;
- exclusion areas;
- land under objects of immovable state property;
- land under state property objects of engineering infrastructure of state and interfarm melioration system.

Cabinet of ministers of Ukraine transfers land plots not included in any administrative and territorial body (Chornobyl exclusion zone is not a part of any community) from state property to ownership or use, and grants perpetual use of land plots forcibly joined to state property according to the Law of Ukraine «On Main Principles of Forcible Removal of Russian Federation Property and its Residents into ownership of Ukraine».

Mandate of related authorities for land management are their discretionary mandate which they can exercise at their discretion making one or other best suited legal decision (Recommendation of the Committee of Ministers of the Council of Europe No. R(80) 2).

This discretionary decision-making on land management creates high risk for corruption since *corruption is most* likely to happen at this stage.

For evaluation of risks of corruption arising during land paperwork drafting, lets assess every managerial decision that could be made by the authority while managing title lands.

Acquisition of ownership rights for bowels use purpose is conducted by legal entities and private individuals by transferring land lots in one

of the following ways: in full ownership, allowing use, and establishment of an easement.

Acquisition of land ownership or use has its pros and cons. One of the main disadvantage of both options is a need of change of intended purpose of land plot, as this is long and not completely clear procedure.

Registration of title to land plots into private ownership

Legal entities with Ukrainian investments enter into title land ownership for entrepreneurial activity if they acquire land plots under the sale agreement.

The sale of state or communally owned land plots and the acquisition of the rights to use them for the purposes of bowels use is carried out by the bodies authorized to manage these lands on a competitive basis (at land auctions in the form of an electronic auction) (p. 2 art. 127 of the Land Code of Ukraine).

Part 2, art. 134 of the Land Code of Ukraine determines the grounds under which state or communal land plots are excluded from sale or lease via land auctions in case of:

- *use of land plots for purposes related to bowels use in compliance with received special permits;*
- *the location of immovable property objects on land plots (owned by the bowels users);*
- *in the event of granting a land plot for use (lease) to an investor with significant investments for the implementation of an investment project with significant investments.*

That is to say, land auctions are not conducted solely to sale the plot which, at the time of sale, is legally used by the bowels user according to a special permit.

In the event that a subsoil user intends to purchase a state or communally owned land plot that was not previously used by that user, and provided there are no immovable property objects on it belonging to the bowels user, the sale of ownership rights to such a land plot is carried out at land auctions.

However, there are cases where due to a misinterpretation of p. 2 Art. 134 of the Land Code of Ukraine, or through agreement with authorized

bodies, the sale and transfer of land plots for bowels use purposes occur outside of auctions, in violation of the law.

It is advisable to make changes to this article of the Land Code to minimize negative factors causing corruption during registration of land rights.

If bowels user is entitled to acquire state or communally owned land plots into ownership outside of auctions, such person submits an application to the authorized body for permission to draft a land management project for the land plot allocation, specifying the location of the land plot, its intended purpose, size, and area.

The authorized body *makes decision to grant permission for drafting of the land management project for the allocation of the land plot*, or refuses to sell.

One of the grounds for refusing the sale of land is a prohibition established by the Land Code on transferring the land plot into private ownership. Such a prohibition may apply both to the land plot itself, taking into account its features, purpose, and value, and to the person wishing to purchase such a land plot (the presence of sanctions, bankruptcy, being in the process of termination, exceeding the limit on the acquisition of agricultural land plots, the presence of foreign investments, etc.

The approval of the drafted land management project by the authorized body, with the simultaneous *decision to sell the land plot*, constitutes a ground to finalize a land plot purchase and sale agreement. The land plot purchase and sale agreement is subject to notarization and state registration in the State Register of Property Rights to Real Estate.

In the case of the sale of state or communally owned land plots at land auctions, the authorized body acts as the organizer, and the land auctions are carried out following the procedure stated by Chapter 21 of the Land Code of Ukraine.

The procedure land auctions is described in Chapter 21 of the Land Code of Ukraine, is mandatory if the land auctions involve the sale of the following:

- a) state and communally owned land plots, or their transfer into use by decision of the authorized bodies;
- b) agricultural land plots of all forms of ownership.

Fully formed land plots, listed in the State Land Cadastre, are sold at auctions.

The sale of privately owned land plots may be carried out at land auctions only on the initiative of the land plot owners.

The preemptive right of a bowels user to purchase agricultural land

In the matter of purchasing a land plot and formalizing private ownership rights to it, the state provides bowels users with additional guarantees for buying land in the form of *a preemptive right to purchase agricultural land plots with the first degree of precedence*. This right is granted to persons who have obtained a special permit for the development of mineral resources of *national significance (metallic ores of non-ferrous metals, metallic ores of precious metals, metallic ores of rare-metal and rare-earth metals, radioactive metals, electro- and radiotechnical raw materials)* and applies to plots located within the boundaries of the bowels plot granted for use (Article 130-1 of the Land Code of Ukraine).

Preemptive right for purchase is applied to all agricultural lands of all kinds of ownership. This right is exercised under *condition that subject of preemptive right pays the sale price and in case of tender auction its offer equals the highest bid*.

Individuals with preemptive right for land purchase are defined by receiving an extract on the land plot from the State Cadastre. Thus the preemptive right can only be exercised if a land plot is listed in the State Cadastre and has its relevant cadastre number.

The law allows the bowels user to transfer their preemptive right to purchase land to other entities for the duration of the special mining permit. The right is granted if the subsoil user cannot legally acquire of the land plot into his property (for example: the bowels user is an entity with foreign investments, or they have exhausted the land purchase limit of 10,000 hectares). This right is terminated upon the cancellation of the special permit.

All rights and obligations of the previous preemptive right holder of land purchase are transferred to the person to whom such right has been assigned.

Granting bowels users holding special permits a priority right to purchase agricultural land may result in a reduction of agricultural land ar-

eas, the bowels user may changed intended purpose to industrial land for the subsequent commencement of mining operations. The legislator has prioritized the land purchase right specifically for the bowels user as opposed to agricultural producers, who are second in precedence for purchase right.

Transfer of land plots for use outside of public auctions procedure

The allocation of state or communally owned land plots for use outside of public auctions procedure is carried out by the authorized body following a procedure stated by Article 123 of the Land Code of Ukraine.

The right to use a land plot for bowels use purposes is granted for the duration of the special permit. The termination of the right to bowels use upon the expiration of the bowels use period established by the special permit constitutes the grounds for the termination of the right to the land plot use (Article 141 of the Land Code of Ukraine).

As a mandatory requirement, the allocation of a land plot for use shall be carried out on the basis of the drafting of the following land management documentation:

1. Land management projects on the allocation of land plots in case of:

- land plot granting with change of its intended purpose;
- new land plot formation (excluding division and consolidation).

2. Technical land management documentation for establishing the boundaries of a land plot in kind (on site), in all other cases.

The drafting of both types of land management documentation is carried out strictly *based on a permit* issued by the authorized body.

A bowels user interested in acquiring of land plot for use submits an application for a land management project development permit to the authorized body.

The authorized body shall grant the permit or issue a reasoned refusal within a one-month period. Grounds for refusal may include: non-compliance of the land plot location with the requirements of legislation, or general plans of settlements, other urban planning documentation, or feasibility studies for the use and protection of lands of administrative-territorial units.

The drafted land management project *has to be approved by the authorized body, which issues a corresponding decision to that effect*. With the decision to allocate the land plot for use based on the land plot allocation project, the authorized body approves the land management project, removes land plots out of current land users ownership (if such removal is necessary), and allocates the land plot for use with defined conditions.

The law states that non-compliance with the requirements of legislation constitute grounds for denial to approve a land management project. However, the specified legal provision for refusal is ambiguous, violates the principle of legal clarity and facilitates corruption practices. The law must provide a clear and specific definition of the grounds for refusal to approve a land management project in order to minimize factors conducive to corruption.

It should be noted that during the process of ownership acquiring or securing the use of a state- or municipally-owned land plot, the bowels user applies directly to the authorized body acting on said authorized body discretion. So, there is direct access to the person performing public authority functions, which constitutes a high corruption risk.

In the case of restrictions to possibility of land acquisition, there is a high probability that a bowels user who has paid significant funds to obtain a special permit will collude with the authorized body (specifically the local council), to secure the desired decision. This may result in the illicit enrichment of officials, and the granting permissions that will negatively impact conditions of lands which, taking into account their intended purpose and specific characteristics, cannot be used in mining.

Registration of land easement rights

The most common form of securing land rights for bowels use is the establishment of a land easement right, which constitutes *a person's right to the limited use of land plot belonging to another person*.

The establishment of land easements for bowels use purposes does not require a change in the intended purpose of such land plots, except for lands of the nature-preservation fund, health-recreation lands, recreational lands, and lands of historical and cultural significance (Part 4 of Article 66 of the Land Code of Ukraine).

The opportunity for bowel user to use an easement was established by the Law of Ukraine «On Amendments to Certain Legislative Acts of Ukraine Regarding the Improvement of Legislation on the Extraction of Amber and Other Minerals».

Land plots are allocated for use to holders of special permits through the establishment of land easements under following conditions:

- in accordance with the boundaries of the subsoil plots and the validity periods of the respective special permits for bowels use;
- outside the boundaries of the deposits for the construction and placement of structures/facilities related to the specified type of activity (with automatic extension of the land easement period in the event of an extension of the validity period of the respective special permit for bowels use).

An easement is established by contract, statute, will, or court decision. A land easement may be established by a contract between the person requesting its establishment and the owner (land user) of the land plot. The land easement is subject to state registration under procedure prescribed for the state registration of rights to immovable property.

The law grants *the owners or land users of land plots, as well as other interested parties*, the right to demand the establishment of the following land easements:

- right for construction and placement of facilities of oil and gas extraction;
- the right to use a land plot for the needs of geological survey, including scientific-industrial development of minerals, with subsequent mineral extraction (industrial development of deposits), including the right to construct and place facilities related to the specified type of activity.

It is worth noting that land easement is valid in the event that the rights to the land plot, with established easement, transfer to another person.

A subsoil user may establish a land easement on lands of all forms of ownership.

The establishment of land easements on state or communally-owned lands is stated in Article 124-1 of the Land Code of Ukraine.

A bowels user wishing to establish an easement should submit an application to the authorized body *responsible for the disposal of state- or municipally-owned lands, or to the land user if the land plot is already in use.*

Based on the results of the petition examination the authorized body may take the following actions:

- if the land plot is not formed and is not used – the authorized body makes a decision of approval for easement establishment and provides agreement conclusion of the easement, or gives substantiated refusal to the easement establishment;

- if the land plot is in use – provides agreement conclusion of the easement, or gives substantiated refusal to the easement establishment.

In case of the land plot being in use written consent of land user is obligatory. Bowels user attaches the consent to application for easement establishment.

To establish an easement, technical land management documentation must be developed to determine the boundaries of the part of the land plot subject to the easement. No development permit is required (*for a registered land plot*).

If *the land plot* has not been formed, the easement is established on the basis of a land management project for land allocation, the development permit for which is issued by the authorized body. Such permit shall be valid for 6 months.

The land management project for the land plot allocation is developed by business entities acting as executors of land management operations.

The land easement agreement is concluded with the relevant authority based on the legal authority of the decision issued by such body.

If the authorized body refuses to approve the land allocation project for establishment of the easement or refuses to make a decision to conclude the easement agreement, the land easement shall be established by a court decision upon a lawsuit filed by the bowels user.

Land plots of all ownership forms and categories shall be granted to holders of special permits for the use of oil-and-gas-bearing deposit for the construction, placement, and operation of oil-and-gas production

facilities and deposit development through the establishment of land easement.

To establish a land easement for oil-and-gas-bearing deposit users, the special permit holder applies to the land plot owner (user) with a proposal to conclude a land easement agreement.

In case of failure to reach an agreement on an easement for the purposes of the oil and gas industry, such easement may be established by a court ruling. A court ruling on the establishment of a land easement serves as the legal basis for the state registration of the land easement right.

The validity of an easement is maintained in the event of the transfer of rights to the land plot, in respect of which the easement has been established, to another person. In such cases, corresponding amendments may be made to the previously concluded easement agreements.

If a discovered deposit or a *created underground storage facility extends beyond the boundaries of the bowels oil and gas plot granted for use for the purpose of geological study*, upon the subsoil user's application, the size of this plot may be increased for the same purpose without conducting a tender auction provided that the adjacent bowels oil and gas plot has not been granted for use.

A specific feature of many types of bowels use, particularly open-pit mining (e.g., quarries), is the significant area where mineral extraction is carried out, as well as the substantial areas where facilities and structures are constructed to service operations related to subsoil use. In fact, for a long period, these lands cannot be used for their designated purpose – such as agriculture, forestry, etc.

According to Part 3 of Article 406 of the Civil Code of Ukraine the owner of a land plot has the right to demand the termination of an easement if it prevents the use of this land plot for its intended purpose. Open-pit mineral extraction, as well as the placement of facilities and structures, makes activities for the primary purpose impossible on such plots. Despite the fact that the lands formally remain agricultural or forestry lands, they undergo destruction of the soil layer, disruption of the water regime, deforestation, etc., resulting in the loss of forestry and agricultural products, as well as the ecological and recreational functions of the plots, and such plots are subject to future reclamation. The

state loses funds in the form of the difference in land payments between industrial lands and forestry lands. In this regard, it is necessary to revoke the right to bowels use on lands with intended purposes other than industrial lands on the basis of land easements, and to return to the mandatory procedure for changing the intended purpose of land plots additionally introducing an environmental impact assessment procedure for changing the intended purpose of lands.

Land Acquisition for Bowels Use Purposes

For the extraction of mineral resources of national significance and the construction of facilities related to this type of activity, authorized bodies may acquire land plots of state or communal ownership that were granted for permanent use from state and communal lands.

Lands of the nature reserve fund, as well as lands designated for health-improvement, recreational, and historical-cultural purposes, shall not be subject to acquisition.

The transfer of a land plot for use to a bowels user holding a special permit is carried out on the basis of a decision by the authorized body to acquire such land (Part 3 of Article 149 of the Land Code of Ukraine).

The consent of the land user is required for the acquisition of a land plot. In the event that the land user fails to grant consent for the acquisition of the land plot, the bowels user files a lawsuit in court for the acquisition of the state- or communally-owned land plot from permanent use.

The satisfaction of such a lawsuit is permitted if the facilities planned for placement on the land plot cannot be located on another one, or if placing such facilities on other land plots would cause significant financial damages or lead to negative environmental consequences for the respective territorial community, society, or the state as a whole.

A currently prevalent illicit scheme entails the compulsory buyout (expropriation) of private land parcels under the guise of public necessity.

Initially local councils acting in the interest of the bowels user, adopt a decision on the withdrawal of privately owned land for public needs or on the grounds of public necessity. *If the landowner voluntarily consents to the buyout, a sales and purchase agreement is concluded. In the absence of consent, the land plot is forcibly seized by a court decision, with*

mandatory compensation of its value to the owner. *Following the voluntary buyout or the compulsory requisition of land by a court decision, the land is transferred into communal ownership and subsequently granted for use to the bowels user – a legal entity of private law.*

Interestingly, the provision of a land plot to a bowels user, which was bought out for public needs or forcibly seized on the grounds of public necessity to meet such needs, is carried out without an auction (Paragraph 10 of Part 2 of Article 134 of the Land Code of Ukraine). Due to this provision of the law, the bowels user obtains such a plot for use unhindered, bypassing land auctions.

Such a scheme is corrupt, given that the economic activity of the bowels user – a legal entity of private law – is not conducted in the public interest, but to generate profit for this entity. Under these circumstances, the land is seized and granted for use unlawfully. However, challenging such a procedure is only possible through judicial proceedings.

Change of intended purpose of land plots

As was previously mentioned, bowels use can only be carried out on industrial lands, therefore, if the land plots do not belong to this type of intended, the bowels user must change it in the process of formalizing ownership or land use right.

The change of the type of land intended use is carried out in compliance with the requirements of Article 20 and paragraph 23 of Section X «Transitional Provisions» of the Land Code of Ukraine.

It is important to note that bowels user who has obtained a state or communally owned land plot for bowels use purposes without a land auction cannot conduct any other activity on such a plot (Part 2 of Article 20 of the Land Code of Ukraine).

The change of land's intended use is carried out in one of the following ways:

1. Through the developed land management project (requires approval from the authorized body).

2. Through Master plan of the settlement, a zoning plan, or a detailed territory plan (based on an extract from urban planning documentation).

3. In the case of the presence of data on functional zones in the State Land Cadastre (based on an application by the owner of a land plot located within the respective functional zone). As of today, the data has not been entered into the State Land Cadastre.

The procedure for changing intended land use, provided that data on functional zones is available in the State Land Cadastre, is the most transparent, as it does not require a decision from an authorized body to change the intended purpose. However, the procedure is still not in practice, and corruption risks continue to persist.

Since the data on functional zones has not been entered into the State Land Cadastre, *the change of land intended purpose is carried out based on land management projects for their allocation and on the basis of a decision to change the intended purpose issued by the body authorized to manage the land*.

Herein, if such project is developed for a privately owned plot, a permit for its development is not required. *The decision to change the intended purpose of private land plots* is made by a village, settlement, or city council.

The developed land management project is approved by the body that made the decision to change the intended purpose of the land plot.

It is worth focusing on the change of the intended purpose of valuable lands, namely e lands of natural reserve and other environmental protection purpose, as well as lands of historical and cultural heritage (paragraph «r», part 1, Article 150 of the Land Code of Ukraine).

For instance, on the territory of natural reserves, geological exploration, mining, disturbance of soil cover, hydrological and hydrochemical regimes, as well as the destruction of geological outcrops that pose a threat to its natural objects, are prohibited as stated in Article 16 of the Law of Ukraine «On the Natural Reserve Fund of Ukraine».

At the same time, Part 9 of Article 20 of the Land Code of Ukraine allows, as an exception to the general rule, changing the intended purpose of particularly valuable lands and forest land plots for the placement of objects related to mining, oil and gas wells, and production facilities related to their operation.

It is important to consider that change of the intended purpose of state and communally owned land plots within the nature reserve fund

and other conservation, historical, cultural heritage and forestry lands, which results in the removal of such land plots from these categories (except for changing the intended purpose of forestry land plots to accommodate linear energy infrastructure facilities, pipelines, and other linear communications or to deploy and operate electronic communication networks on such land plots with an area of up to 0.05 hectares), as well as changing the intended purpose of peatlands with a peat depth exceeding one meter and drained peatlands regardless of depth, or peatlands within wetlands of international importance should be approved by the Cabinet of Ministers of Ukraine (Part 7, Article 20 of the Land Code of Ukraine)

The specified types of peatlands have a corresponding agricultural soil group determined in the List of Agricultural Soil Groups, which is Appendix 5 to the Order of Maintaining the State Land Cadastre approved by Resolution of the Cabinet of Ministers of Ukraine dated October 17th, 2012, No. 1051.

There are numerous instances where a bowels user colludes with the body authorized to manage land and third parties conducting soil quality assessments, unlawfully alters the agricultural group of land plots and wrongfully removes them from the category of especially valuable lands, in order to subsequently change their intended purpose bypassing the procedure for the Cabinet of Ministers of Ukraine approval.

Thus, in order to preserve especially valuable lands from unlawful changes to the agricultural soil group, particularly peatlands with a peat depth exceeding one meter, it is advisable to monitor all valuable lands for which the agricultural group is being changed, and to obtain approval for such changes from the State Cadastre which controls the use and protects the land.

Furthermore, if a bowels user plans to change the intended purpose of agricultural land for: *oil and natural gas extraction, extraction of mineral resources of national importance, quarries and open-pit mining on an area exceeding 25 hectares, or peat extraction on an area exceeding 150 hectares, as well as to change the intended purpose of valuable lands*, an Environmental Impact Assessment procedure is performed (Article 3 of the Law of Ukraine «On Environmental Impact Assessment»).

Thus, changing the intended purpose of such lands and the acquisition of rights to them by the bowels user may be carried out only after obtaining a positive Environmental Impact Assessment Conclusion. In the event of a failure to obtain the Conclusion, the bowels user will be unable to change the intended purpose of the land and, consequently, will be unable to use the mineral reserve deposit on the basis of a special permit.

Under these conditions, it is advisable to carry out an Environmental Impact Assessment procedure prior to the issuance of a special permit for bowels use, with making this procedure mandatory by law.

Compensation of damage caused to land plots

Mining activity usually cause damage to the land plots on which such activities are carried out. Land plots with disturbed soil as a result of mineral resources extraction are classified as degraded lands subject to conservation, which is one of the elements of land protection (Article 171 of the Land Code of Ukraine).

Negative impact on land may include: erosion, mudflows, flooding, waterlogging, secondary salinization, overdrying, compaction, degradation and contamination of land, waste consolidation and other negative processes.

Since the location, design, construction, commissioning, and operation of facilities for development of mineral resources negatively impact the condition of land, *landowners and land users shall be compensated for losses incurred as a result of using land plots for bowels use needs, including needs of the oil and gas industry.*

The owner of a land plot encumbered by a land easement also has the right to compensation for losses caused by the establishment of such a land easement.

In the event of the withdrawal of forest lands and shrubs for the use of oil-and-gas-bearing deposit and for the construction and location of facilities related to the specified type of activity, the corresponding losses of forest lands and shrubs as a primary means of production in forestry shall be subject to compensation.

Removal and relocation of the fertile soil layer

Bowels users are carrying out the removal and relocation of the soil cover of land plots *exclusively on the basis of a working land management project developed in accordance with the procedure established by law* (without the need to obtain a permit from the State Cadastre).

The removal, stockpiling, and storage of the topsoil layer and its application onto the land plot from which it was removed (recultivation) or onto another land plot, shall be carried out to increase land plot's productivity and improve other qualities.

Control over the subsoil user's compliance with the conditions for the removal, preservation, and use of the fertile soil layer shall be exercised by the State Cadastre. Additionally, state control over the use and protection of land shall be exercised by the executive bodies of village, settlement, and city councils within the territory of the respective territorial communities.

Violation of legislation on land protection may serve as grounds for filing a lawsuit to demand temporarily restriction, suspension, or termination of the activities of business entities.

The State Cadastre is authorized to submit petitions to executive authorities or local government bodies to restrict or suspend the development of land plots in the event of extraction of mineral resources, including peat, or the conduct of geological survey and other operations in violation of the requirements of the land legislation of Ukraine (Article 6 of the Law of Ukraine «On State Control Over the Use and Protection of Land»).

Currently, state control over the protection and rational use of land is not properly exercised due to the suspension of planned state control activities in the sphere of economic activity for the period of war in Ukraine. Insufficient control over land use and the implementation of land protection measures creates conditions for law infringement by bowels users.

Corruption risks in the registration of land rights

The land relations and related legal processes is characterized by high corruption risks. For the most part, corruption risks arise during

the exercise of discretionary powers by officials authorized to manage the land, namely local councils.

Local councils manage land based off of legislation, by making executive decisions in the following cases:

1. Buyout of a communally owned land plot by a bowels user (bypassing the auctions):

- decision to grant permission for the project development of land plot management for said land plot allocation;
- decision on the approval of the land management project and the sale of the land plot.

2. Assignment of use of a community-owned land plot (without land auction):

- decision on granting permission for the development of a land management project for the allocation of a land plot;
- decision on the approval of the land management project and the transfer of the land plot for use for the duration of the special permit.

3. Establishment of a land easement on community-owned lands:

- decision on granting consent for the development of a land management project for the allocation of a land plot (if the land plot is not formed);

- decision on the establishment of a land easement.

4. Requisition of community-owned lands from permanent use:

- decision on the requisition of the land plot and the termination of the right of permanent use;
- decision on the transfer of the land plot for use for the extraction of mineral resources.

5. Purchase or compulsory requisition of privately owned land plots:

- decision on the purchase of the land plot for public needs;
- decision on the compulsory requisition of the land plot in the public interest;
- decision on the transfer of land for use to a bowels user.

6. Change of the intended purpose of the land plot:

- decision on the approval of the change of the designated purpose of the land plot.

As one can see, local councils are entitled with broad discretionary powers and full administrative discretion in decision-making. At the

same time, vague legislative regulation and direct contact with interested parties serve as grounds for corruption and allow officials to use these powers in favor and in the interests of bowels users.

Local councils adopt all the management decisions listed above after a person has acquired the right to use bowels in accordance with a special permit. Most corruption risks could be eliminated if a mandatory procedure for the formation and approval of land plots by local councils, and *their prior reservation for bowels use, were introduced*. This will create more transparent rules regarding land allocation for bowels use purposes.

In modern realities, when a significant number of state oversight and control tools are either not exercised or exercised improperly, it is necessary to introduce public control over the decision-making process in the field of land relations. It is also crucial to launch the new functionality of the State Cadastre *regarding functional zones as soon as possible, which will allow for a transparent change of the intended purpose* of land plots.



State regulation is a form of activity expressed in the establishment by the state of general rules of conduct and activity for participants in social relations, in particular through the exercise of control and oversight.

State control is an important tool of state regulation that ensures compliance with the requirements of legislation and other legal acts, in particular individual ones issued by state bodies, in order to identify non-compliance and violations in the activities of economic entities, ensure the elimination and ending of such violations, and hold the guilty parties liable for the violations committed.

In bowels use, state control is aimed at ensuring compliance by all state bodies, enterprises, institutions, organizations, and citizens with the established procedure for bowels use, and the performance of other duties on bowels protection established by the legislation of Ukraine.

State control in the field of bowels use is exercised with due regard for compliance with the rules for conducting geological survey operations during the development of mineral resources deposits. The validity and promptness of measures ensuring the safety of people, protection of property, the environment, and mines from the adverse impact of operations related to bowels use. Compliance with the established procedure for the closing-down and conservation of mining facilities or their sections, as well as individual mining boreholes.

Methods of control include checking the compliance of bowels users' activities with the requirements of environmental and natural resource legislation, issuing mandatory instructions to mining enterprises and other bowels users to eliminate violations of mining and bowels legislation, providing recommendations for improving activities in the field of bowels use and protection; and terminating illegal activity of bowels users.

State control in bowels use is exercised by the procedure established by the Law of Ukraine «On the Basic Principles of State Supervision (Control) in the Matter of Economic Activity» (hereafter – Law dated 5th of April, 2007, No. 877-V). This law defines the powers of state control bodies, as well as the liability of economic entities during the exercise of state control.

The scope of Law No. 877-V 05.04.2007 also extends to relations associated with the exercise of state control over use and protection of land.

State supervision (control) means the activity of authorized state bodies aimed at detecting and preventing violations of legislative requirements by economic entities and ensuring the interests of society, in particular, the proper quality of products, works, and services, and an acceptable level of danger to the population and the environment.

As a general rule, state control is exercised based on the principle of priority of safety in matters of human life and health, the functioning and development of society, and the living and human environment over any other interests and objectives in the matter of economic activity (Article 3 of Law 05.04.2007 No. 877-V).

The exercise of state control is among the primary tasks of central executive authorities whose powers include the performance of control and supervisory functions.

The system of bodies authorized to exercise state control in the field of subsoil use includes:

1. The Ukrainian Geological Survey (Derzhgeonadra) exercises state control over the geological study of bowels (state geological control) and the rational and efficient use of the bowels of Ukraine. The governing body is the Ministry of Economy, Environment and Agriculture of Ukraine.

2. The State Environmental Inspection of Ukraine (Derzhkoin-spektsiia) exercises state control over the use and protection of subsoil, in the field of environmental protection, and the rational use, reproduction, and protection of natural resources. The governing body is the Ministry of Economy, Environment and Agriculture of Ukraine.

3. The State Labor Service of Ukraine (Derzhpratsi) exercises state supervision over the conduct of operations for the geological bowels

survey, their use and protection, as well as the use and processing of mineral raw materials (state mining supervision). The governing body is the Ministry of Economy, Environment and Agriculture of Ukraine.

4. The State Service of Ukraine for Geodesy, Cartography and Cadastre (Derzhgeokadastr) exercises state control over the use and protection of lands of all categories and forms of ownership. The governing body is the Ministry of Economy, Environment and Agriculture of Ukraine.

5. The Cabinet of Ministers of Ukraine exercises control over the implementation of the production distribution agreement on behalf of the state.

A more detailed description of the powers of each control body in bowels use is provided below.

1. Ukrainian Geological Survey as the state geological control body, carries out state control measures in the field of geological study and rational use of bowels by carrying out inspections of bowels users activity (Article 62 of the Code on Bowels of Ukraine).

The state geological control body carries out the following types of inspections regarding:

1) compliance with bowels protection requirements during survey activity;

2) the implementation of state programs for geological survey, geological tasks, and orders;

3) the substantiation of the methods and technologies applied, as well as the quality, comprehensiveness, and efficiency of geological bowels survey operations;

4) the implementation of decisions on the methodological support for geological bowels survey and use;

5) compliance with standards, rules, and other requirements for geological bowels survey and use, as well as the terms of special bowels use permits and bowels use agreements;

6) the completeness of the study of the bowels' geological structure, along with mining and technical, engineering, geological, environmental and other conditions for mineral deposit exploration;

7) the compliance of geological survey activities and scientific research with state contracts, orders, and projects regulating such activities;

8) the use of technical equipment and methods in geological bowels survey that prevent unjustified losses of mineral resources or deterioration of their quality;

9) the timeliness and alignment with established procedure regarding putting into the production of explored mineral resources deposits;

10) compliance with technologies during the trial run operation of mineral resources deposits to ensure their survey without reducing their commercial value;

11) the preservation of exploratory mine workings and boreholes for mineral deposit development, as well as the preservation of geological documentation, core samples, and duplicate samples that can be used for further bowels study;

12) the validity of directions chosen for survey, exploration, and other geological bowels study operations;

13). the timeliness and accuracy of state registration for geological bowels exploration and use operations, the availability of special bowels use permits, and compliance with the conditions stipulated therein;

14) the completeness and reliability of baseline data concerning the quantity and quality of mineral resources reserves of primary and co-occurring minerals, as well as their components, and balance statement of mineral reserves submitted by enterprises and organizations;

15) the recording of oil, gas, and associated components extraction;

16) the conduct of prospecting, exploration, and other activities for the geological study of groundwater.

Therefore, it is Ukrainian Geological Survey that carries out inspections of bowels users in the specified areas, aiming to prevent and terminate violations of the rules and standards governing geological study and rational use of subsoil.

Specifically, while exercising state control Ukrainian Geological Survey as the state geological control body, has the right to file lawsuits with the court regarding:

- termination of mineral extraction without special bowels use permits (unauthorized bowels use) and

- hold-up of specific types of geological survey activities and/or extraction of mineral resources conducted in violation of standards and rules that may cause deterioration of deposits, a significant reduction in operations efficiency, or result in losses to the state;
- issuing mandatory instructions (orders) to eliminate deficiencies and violations during geological study and bowels use, specifying the nature of the violation and the specific actions the bowels user must take to remedy them;
- calculation within its competence, the amount of losses caused to the state as a result of unauthorized bowels use.
- taking, within the framework of state supervision (control) measures, samples of raw materials, semi-finished products, and finished products, and appointing expert examinations to calculate the amount of losses caused to the state as a result of unauthorized bowels use;
- presenting claims for compensation of losses caused to the state as a result of unauthorized bowels use.

2. The State Environmental Inspectorate of Ukraine (as established in Part 4 of Article 61 of the Subsoil Code of Ukraine) calculates the amount of losses caused to the state as a result of unauthorized bowels use, in accordance with the methodology for determining the amount of compensation for losses approved by the Ministry of Economy.

The extended powers of the State Environmental Inspectorate regarding the exercise of state control are established in the Regulation on the State Environmental Inspectorate of Ukraine, approved by Resolution of the Cabinet of Ministers of Ukraine No. 275 dated 19th of April, 2017. According to the Regulation State Inspectorate controls the compliance with the requirements of legislation on the protection of land and bowels on the following issues:

- conservation of degraded and inefficient lands;
- conservation of wetlands;
- compliance with environmental requirements when granting ownership use and leasing of land plots;
- the implementation of measures for prevention of land pollution by chemical and radioactive substances, waste, and wastewater;

- compliance with the regime for the use of lands of nature conservation and other environmental protection purposes, as well as territories subject to special protection;
- compliance with environmental standards of the use and protection of land;
- construction and dredging activities, sand and gravel extraction, and the laying of cables, pipelines, and other utilities on lands of the water;
- the establishment and use of water protection areas and coastal zones, as well as compliance with the regime of use these territories;
- bowels use and protection.

The State Environmental Inspectorate has the authority to file an application on the suspension of the of special permits for bowels use in case of a violation of environmental legislation requirements during bowels use.

The State Environmental Inspectorate is authorized to take measures to terminate unauthorized bowels use and the construction at areas of mineral deposits in violation of the established procedure.

Thus, the State Environmental Inspectorate exercises state control specifically over matters of environmental protection, as well as the rational use, reproduction, and protection of natural resources.

3. The State Labour Service, established in accordance with the requirements of Resolution of the Cabinet of Ministers of Ukraine «On Optimization of the System of Central Executive Bodies» dated 10th of September 2014, No. 442 as a result of reorganization through the merger of the State Service for Mining Supervision and Industrial Safety and the State Labour Inspection,

The State Labour Service, as the body exercising state mining supervision, conducts inspections on the following matters (Article 63 of the Code on Bowels of Ukraine):

- compliance with the requirements for safe mining operations during the geological study and development of mineral deposits, construction and operation of underground structures, and the closing (conservation) of mining operations;

- compliance with bowels protection requirements when establishing quality requirements for mineral raw materials and during development of mineral resources;
- compliance with the rules for conducting geological and mine survey operations during the survey development and operation of mineral resources deposits;
- the completeness of extraction of estimated mineral reserves and components contained therein, compliance with the established procedure for the evaluation of mineral reserves, and the validity and timeliness of their write-off;
- compliance with the rules and technologies for processing mineral raw materials;
- the correctness and timeliness of implementing measures that guarantee safety of people, buildings, structures, environment, mine workings and boreholes from the harmful impact of activities associated with bowels use.

According to Paragraph 3 of the Regulation on the State Labour Service of Ukraine, approved by Resolution of the Cabinet of Ministers of Ukraine dated 11th of February, No. 96, the main tasks of the State Labour Service are as follows:

- the correct procedure of mineral resources deposit development and the complete study of mineral resources deposits, along with mining, technical, engineering, geological, hydrogeological and other conditions for their development, construction and operation of underground structures, and disposal of harmful substances and production waste;
- exercising state supervision (control) in mining at enterprises of the coal, ore-mining, and non-metallic mining industries during carrying out of mining activity, construction, operation, and the closing or conservation of mining facilities;
- exercising supervision (control) over compliance with the terms of special bowels use permits.

4. Among the aforementioned bodies of state control in the field of bowels use State Cadastre, exercises state control over the use and protection of lands of all categories and forms of ownership.

State Cadastre is important in control body since bowels use involves a complex of activities namely the placement, design, construction, and commissioning of facilities, including those for mineral extraction, which, in case of violation of the Ukrainian land legislation requirements, may negatively impact the condition of land and lead to erosion, mudflows, flooding, waterlogging, secondary salinization, over-drying, compaction, deterioration and pollution of land, waste contamination, and other negative processes on a particular land plot, as well as on adjacent land plots.

State Cadastre has the authority to submit petitions to executive bodies or local self-government authorities to restrict or suspend the development of land plots if mining operations, including peatlands, carrying out geological survey and other operations violate land legislation requirements, as well as to terminate the construction and operation of facilities in case of violation of land legislation requirements until these violations are fully removed and their consequences are eliminated (Subparagraph 37, Paragraph 4 of the Regulations on the State Service of Ukraine for Geodesy, Cartography and Cadastre, approved by Resolution of the Cabinet of Ministers of Ukraine dated 14th of January 2015, No. 15).

State Cadastre officials and its local offices which act as state inspectors are entitled to carry out inspections and, based on their results, prepare inspection reports or protocols on administrative violations in land use and protection and compliance with the requirements of legislation on land protection.

State control over the use and protection of lands is also exercised by the executive bodies of village, settlement, and city councils, provided that the respective council adopts a decision to exercise such control (Article 5 of the Law of Ukraine «On State Control over the Use and Protection of Lands»). In this case, the executive bodies of such councils exercise state control within the limits of related legislation.

Since state control over the use and protection of land is aimed at ensuring the rational use and reproduction of natural resources and environmental protection, the State Environmental Inspectorate and State Cadastre are the main state bodies entrusted with control over compli-

ance with environmental protection legislation during the geological survey, use and protection of bowels.

5. The Cabinet of Ministers of Ukraine exercises state control and supervision over the conduct of operations provided for by a production distribution agreement, as stated by Article 28 of the Law of Ukraine «On Production Distribution Agreements».

The Cabinet of Ministers of Ukraine may authorize a central executive body to exercise state control over the operations provided for by the production distribution agreement, in the manner and under the conditions stipulated by the agreement and legislation.

Furthermore, the Cabinet of Ministers of Ukraine, can involve its authorized body, to organize and carry out a comprehensive inspection of compliance with the terms provided for by the production distribution agreement at least once every five years. In case of substantial violations of the agreement, the Cabinet of Ministers of Ukraine has the right to apply to the court for early termination of the agreement with compensation for losses, either with or without the simultaneous suspension of the operations established by the production distribution agreement.

Planning of State Control Practices and Risk Assessment

State control is exercised only on the basis and in the manner prescribed by law (Article 3 of the Law No. 877-V dated 5th of April, 2007), which excludes the possibility of carrying out inspections on any grounds not stated in the legislation.

State control over activities in bowels use is exercised in the form of inspections, which may be planned or random, as well as comprehensive. Based on the results of the inspections, if violations of legislative requirements are detected, the control bodies prepare inspection reports and issue mandatory instructions (orders) to remove identified deficiencies and violations of legislative requirements. Control bodies also have the right to issue rulings on administrative violations and impose administrative penalties.

The State Environmental Inspectorate carries out inspections (including inspections of documentation) using instrumental and laborato-

ry control, prepares inspection reports based on the results of state control in accordance with the legislation, issues mandatory instructions (orders) and monitors their execution, and performs laboratory testing.

A planned inspection is a pre-scheduled event carried out by control bodies in accordance with the annual inspection plan, which contains a list of economic entities scheduled for inspection.

State control is exercised based on the principles of risk assessment, planning and systemic consistency of state control, where risk is defined as the probability of negative consequences arising from the conduct of economic activity.

Taking into account the level of acceptable risk, that is a level that does not exceed the maximum permissible level, all economic entities subject to state control are classified into one of three degrees of risk: high, moderate, or low.

Depending on the degree of risk arising from the of economic activity, the control body determines the frequency of scheduled state control procedure and the list of issues for carrying out control activities, which is approved by an order of such body. Depending on risk level of specific economic activity, planned state control activities are carried out with the following interval:

- high risk level – not more than biannually;
- moderate risk level – not more than once in three years;
- low risk level – not more than once in five years.

The state control body determines, within its field of competence, the criteria for assessing the degree of risk arising from the carrying out of economic activity.

The methodology for developing the criteria for assessing the degree of risk arising from the conduct of economic activity includes the assessment of the degree of danger, the scale, type, and field of activity, and the presence of violations in the previous activities of economic entities.

Currently, state control bodies of bowels use assess the degree of risk arising from the carrying out of economic activity guided by the following criteria:

1. Ukrainian Geological Survey – in the field of geological study and rational use of bowels, based on the Criteria approved by Resolution of the Cabinet of Ministers of Ukraine dated 31st of October 2018, No. 913⁴.

2. State Environmental Inspectorate – in the field of environmental protection, as well as the rational use, reproduction, and protection of natural resources, based on the Criteria approved by Resolution of the Cabinet of Ministers of Ukraine dated 6th of March, 2019, No. 182⁵.

3. State Labour Service – in the field of state mining supervision, based on the Criteria approved by Resolution of the Cabinet of Ministers of Ukraine dated 20th of May 2020, No. 383⁶.

4. State Cadastre – in the field of topography and cartography activity, based on the criteria approved by Resolution of the Cabinet of Ministers of Ukraine dated 19th of September 2018, No. 765⁷.

The state control body publishes the criteria and frequency of carrying out planned control activities by posting the information on its official website.

In accordance with Resolution of the Cabinet of Ministers of Ukraine dated 13th of March, 2022, No. 303 the carrying out of planned and random activities of state supervision (control) and state market surveillance has been suspended in Ukraine for the state of war introduced by Decree of the President of Ukraine «On the Introduction of State of War in Ukraine» dated February 24, 2022, No. 64.

For the period of war state state control bodies carry out exclusively random state supervision and control activities based on the requirements specified in Paragraph 2 of Resolution of the Cabinet of Ministers of Ukraine dated 13th of March 2022, No. 303. The Resolution states that due to the presence of a threat having a negative impact on human rights, legitimate interests, life and health, environmental protection, and ensuring state security, as well as for the fulfillment of Ukraine's international obligations, the carrying out of random measures of state supervision (control) is permitted during the period of war state in ac-

⁴ <https://zakon.rada.gov.ua/laws/show/913-2018-п#Text>

⁵ <https://zakon.rada.gov.ua/laws/show/182-2019-п#Text>

⁶ <https://zakon.rada.gov.ua/laws/show/383-2020-п#Text>

⁷ <https://zakon.rada.gov.ua/laws/show/765-2018-п#Text>

cordance with the decisions of central executive bodies responsible for the formulation of state policy in the respective areas.

The plans for carrying out both planned and comprehensive scheduled inspections, which are approved by the State Regulatory Service of Ukraine are developed and published under war state conditions, however, the inspections themselves are not carried out since there is a moratorium on their execution.

Instead, comprehensive planned inspections may be carried out of business entities provided that the business entity is included in the inspection plans of several supervisory authorities simultaneously for the corresponding planning period. In this case, planned activities are carried out comprehensively – simultaneously by all state control authorities. The business entity is granted the right to refuse the comprehensive planned activity by submitting an appeal to the State Regulatory Service of Ukraine.

Unscheduled random state control activities may be carried out only if there are grounds specified in Part 1 of Article 6 of the Law of Ukraine «On the Basic Principles of State Supervision (Control) in the Sphere of Economic Activity». It includes private individual's appeal regarding violations that caused damage to their rights, legitimate interests, life or health, the environment, or state security, with the attachment of documents or their copies confirming such violations (if available). The unscheduled control activities on other grounds not stated in Part 1 of Article 6 of the Law is prohibited.

During an unscheduled random control, only issues stated in basis for control are investigated. The duration of an unscheduled control activity may not exceed ten business days, and for small business entities – two working days.

The Law No. 877-V dated April 5, 2007 establishes liability for applicants in the event of an unsubstantiated application regarding violations by a business entity. This legislative norm prevents private persons from applying to a state control authority, which does not comply with Article 40 of the Constitution of Ukraine, which grants everyone the right to send individual or collective written appeals or personally appeal to state authorities, which are obliged to consider such an appeal.

In regards of such a ground for carrying out an unscheduled inspection as *«upon the appeal of a private person regarding a violation that caused damage to their rights, legitimate interests, life or health, or the environment»* – it implies that the appeal was submitted after the occurrence of negative consequences – the infliction of harm. We believe that the Law itself does not provide basis for an appeal in the event of a threat of damage, thereby automatically excluding an unsubstantiated appeal.

The legal construct of liability for an unsubstantiated appeal serves as an additional deterrent for individuals. Fearing being held liable, they do not request inspections even when legitimate grounds exist, understanding that such an appeal may only harm them instead of resolving the problem. Such a norm does not contribute to the realization of the goals and principles of state control, such as prioritizing safety in matters of human life and health, as well as developing the living and vital environment.

Action algorithm of a supervisory authority during a state control activity:

1. Issuance by a supervisory authority of an order (referral) to conduct a state control activity regarding a business entity subject to inspection (in the event that the business entity is included in the inspection plan, or if there are grounds for conducting an unscheduled inspection).

2. Notifying the business entity of the of a planned control activity not later than ten days prior to the day of carrying out this activity.

3. In the event of detecting violations, supervising body draws up an Act by which must contain a detailed description of the detected violation with reference to the relevant requirement of legislation.

4. On the basis of the Act, provided that violations of legislation have been detected the state control authority files a lawsuit with the court, for the full or partial suspension of production activity.

5. If it is necessary to take other measures, the state control authority draws up an order or a directive to eliminate the detected violations. Among these, an order is a mandatory requirement of the supervisory authority to eliminate violations of legislative requirements, which does not entail the application of sanctions against the business entity. A di-

rective is a mandatory decision of the state control authority to remove the detected violations within specified timeframes. A directive may entail the application of sanctions against the business entity.

State control is carried out in line with the principle of openness and transparency, which is ensured by access to information about control procedure.

The implementation of the specified principle is achieved through the functioning of the Integrated Automated System of State Supervision (Control) (IAS SSC), the purpose of which is to provide information about state control activities.

The Integrated System of State Supervision is established for the purpose of providing business entities, state authorities, and local self-government bodies with information on state supervision (control) activities (Article 4-1 of the *Law No. 877-V dated 5th of April, 2007*).

The Integrated System of State Supervision (control) shall include information on risk levels of legal entities, annual plans for conducting state control activities and the plan for conducting comprehensive activities, reports on the execution of annual and comprehensive plans for conducting state control activities for the previous year; results of the carried out state control activity, and other information (in Part 2 of Article 4-1 of the *Law No. 877-V dated 5th of April, 2007*).

As defined by Part 4 of Article 4-1 of the *Law No. 877-V dated 5th of April 2007*, access to the information of the integrated automated system of state supervision is carried out via the Internet and is open and free of charge. The specified provision is also stated in Paragraph 17 of the Procedure for the Functioning of the Integrated Automated System of State Supervision (Control), approved by the Resolution of the Cabinet of Ministers of Ukraine dated 24th of May 24 2017, No. 387.

Currently, in accordance with Order No. 204 of the State Regulatory Service of Ukraine dated 29th of November, 2022 the access to the information of the integrated automated system of state supervision (control) is restricted, and access to the system is granted only to employees of state control authorities and the State Regulatory Service of Ukraine.

Therefore, during state of war openness, transparency, and the planned nature of state supervision are not ensured, which is reflected

in the cessation of planned state control activities, as well as the restriction of access to the information of the integrated system.

Strictly within the limits of the list of issues, the state control authority, depending on the objectives of the activity and the risk level, determines the issues in respect of which state control will be carried out and specifies them in the inspection referral.

According to the current case law established by the Supreme Court, a violation by a supervisory authority of the requirements for appointing and carrying an inspection (procedural violations) leads to the absence of legal consequences of such an inspection, and the Act adopted based on its results is may be deemed unlawful and canceled. Thus, the improper performance of duties by officials of the state control authority may help a business entity that violated the law and caused damage to the environment to avoid liability.

Description of corruption risks in state control

As defined by Part 6 of Article 4 of the Law No. 877-V dated 5th of April 2007, an official of a state control authority is prohibited from carrying out state control regarding business entities of officials family members, or in the event of a conflict of interest arising for them in accordance with the legislation in the field of prevention and countering of corruption. This is the only norm of the specialized law that establishes provisions regarding the prevention of corruption in the activities of supervisory authorities.

Since the field of bowels use establishes a special regime for the bowels use, which is associated with the specific legal nature of the bowels itself as an object of the ownership right of the Ukrainian people, this requires the exercise of proper state control over the bowels use and does not allow any unlawful actions by state control officials that could weaken such control, in particular through the corruption.

The existence of corruption in the field of state control is a negative factor that diminishes state control over the activities of certain business entities and provides such persons with opportunities for abuse and violations of the legislation.

In general, corruption risks in the activities of the respective state control authority depend on the regulatory and legal framework on the

basis of which this authority exercises its powers, in particular, conducts state control activities. Additionally, factors of corruption offenses include the probability of obtaining an unlawful benefit or the presence of a private interest among officials of supervisory authorities.

The main corruption risk in the activities of state control bodies that facilitates corruption is the excessive discretionary powers of state control bodies, which contribute to officials' disingenuity for the purpose of satisfying their own private interests and the interests of third parties during state control measures, in particular by following ways:

- unreliable documentation of inspection materials;
- misrepresentation of information regarding violations of legislation on the use and protection of bowels obtained during the inspection;
- failure to enter such data into the unified form of the inspection report;
- failure to take response measures to hold violators of the current legislation accountable.

These unlawful actions of state control officials abusing their official position, assist business entities, in particular bowels users, in avoiding or minimizing state control over their activities and concealing facts of violations of current legislation for the purpose of self-enrichment.

The inefficiency of the state environmental and bowels monitoring system, combined with the delayed launch of the state monitoring system reform under the Law of Ukraine No. 2973-IX dated 20th of March 2023, is an additional factor that enables state control officials to act in the interests of bowels users and weakens state control over the field of bowels use.

Following the suspension of both planned and unplanned state control measures over business activities in Ukraine, numerous violations in the field of bowels use are being committed as bowels users exploit this period to their advantage. Given that business activities, particularly in oil and natural gas extraction, coal mining and the mineral extraction industries can undoubtedly have a negative impact on human life and health as well as the environment, the cessation of state control

measures in this sector across the entire territory of Ukraine is unacceptable.

In this regard, under martial law it is advisable to establish a special legal regime for state control in the field of bowels use, which will lead to increased openness and transparency of state supervision and reduce the conditions for corruption.

However, even if planned and unscheduled random inspections are resumed, the situation will not improve significantly as the current mechanism of state control, particularly in the field of environmental protection and natural resources conservation is ineffective and does not properly contribute to the protection and preservation of the environment, the conservation of natural resources, and cannot guarantee of ecological safety.

This problem, which has been hindering the development of environmental protection in Ukraine for years, can be solved by reforming the system of state environmental control.

Back in 2021, the Verkhovna Rada of Ukraine adopted in the first reading the Draft Law of Ukraine «On State Environmental Control» (registration No. 3091). Taking into account the final version of the draft law prepared for the second reading the reform of state ecological control includes the following:

Expanding the list of state control bodies:

- State Environmental Inspection;
- Local territorial bodies of State Environmental Inspection (regions, districts);
- Operational units (raids, patrols);
- State environmental inspectors.

Expanding the types of state control measures:

1. Planned inspections (included in the annual plan with mandatory advance notice);
2. Unplanned random inspections (carried out on the basis of complaints, instructions, emergencies, carried out without advance notice);
3. Patrolling (regular monitoring), which includes:
 - regular surveillance of territories (carried out by a state inspector with the police);
 - formulating a quarterly patrolling plan.

4. Raids (snap checks):

- carried out without advance notice to detect seasonal or widespread violations;
- assigned on the basis of violation analytics.

5. Responding to a call:

- carried out after a phone call or an appeal through «EcoSystem» with applicant identification and recording of the appeal;
- the state inspector's deployment to the incident site is carried out immediately;
- in case violations are detected, a report is drawn up and an inspection is initiated.

The reform introduces mandatory recording of the inspection process using photo, video, and audio recording, which will ensure the transparency of the procedure itself and reduce instances of inspection result distortion.

An important step towards creating an effective state control mechanism as envisioned by the reform, is the expansion of the state inspector's powers to restrict or suspend the business activities if signs of significant environmental damage are detected during a planned or unscheduled inspection (precautionary measures). Such precautionary measures may be introduced for the duration of the inspection and the review of the violation case.

The effectiveness of the state control reform will depend not only on the adoption of such a Law in its entirety and its entry into force, but also on its full-scale launch under war conditions.

Meanwhile, as long as the Draft Law of Ukraine «On State Environmental Control» (Registration No. 3091) remains under consideration by the Verkhovna Rada of Ukraine, it is advisable to take the following measures to reduce corruption risks in the field of state control over bowels use:

1. Conducting planned and unscheduled random state control measures in compliance with the principle of extraterritoriality, according to which state control must be carried out by an official of a territorial state control body located in a different area than the bowels user's activity (without reference to the location).

2. To oblige control authorities to record, on a mandatory basis, the process of conducting a planned or unscheduled activity or each individual action using audio and video equipment.

3. Introduce public oversight over state control in the field of bowels use, involving organizations whose statutory powers include the protection of the environment and natural resources from depletion.

4. Separate the duties between control bodies and eliminate doubling power.

5. Resume planned and unplanned inspections of bowels users operating in the industry within territories where active combat operations are not being conducted and which remain under the control of Ukraine.

6. Exclude the paragraph of Part 1 of Article 6 of the Law No. 877-V dated 5th of April 2007, which establishes the liability of applicants (individuals) for groundless appeals regarding violations of legislative requirements by a business entity.

7. Launch the reform of the state environmental monitoring system without waiting for the end of war in Ukraine.

8. Implement the state environmental control reform through the adoption by the Verkhovna Rada of Ukraine in the second reading of the Draft Law of Ukraine «On State Environmental Control».

These corruption risk-reduction measures can be achieved by aligning a series of laws and regulations, while considering the ongoing war in Ukraine. Several issues concerning state oversight can be addressed by drafting and passing new legislation that will reshape control measures within bowels management and reinforce the capacity of state control.



There are numerous problems in the field of bowels use in particular flaws in environmental regulation during the granting of bowels use permits at auctions and through corruption schemes. One of such corruption schemes is collusion among bidders during an auction for the sale of special permits for bowels use, which are recognized as anticompetitive practices aimed at distorting the results of such an auction. While the primary goal of implementing the electronic bidding system in Ukraine is to ensure transparency in the mining industries, if there is collusion between participants, such bidding can no longer be considered transparent.

This scheme works in the following way: the winning bidder submits a deliberately inflated price during the auction and later walks away from the win. The right to sign the contract then transfers to the runner-up, who happens to be connected to the winner. Despite the fact that Ukrainian Geological Survey acknowledged this issue and the Cabinet of Ministers consequently adopted Resolution No. 247 on of 21st March 2023, increasing the guarantee deposit (paying both a registration fee and a guarantee deposit is required to become an official bidder), this measure has not fully resolved the problem.

A significant flaw in the current legislation regulating bowels use, particularly in the Code on Bowels of Ukraine, is the absence of a provision for public control (oversight) in this field, which creates opportunities for.

Despite this, several platforms are available to the public in Ukraine to track auctions and public procurement. Here are some of them: DOZORRO is a public control system for public procurement; Prozorro.Sale allows the public to monitor auctions for the sale of special per-

mits for bowels use; BI Prozorro enables anyone to check who wins tenders and at what prices purchases are made; YouControl provides a complete profile on every company and individual entrepreneur in Ukraine.

Article 36 of the Law of Ukraine «On the Protection of Economic Competition» defines the grounds for initiating a case on violations of legislation on the protection of economic competition. In particular, the article states that such cases may be initiated based on: applications from business entities, citizens, associations, institutions, and organizations regarding the violation of their rights due to actions or omissions that violate the legislation on the protection of economic competition.

In other words, the public can monitor auctions for the sale of special permits for bowels use for violations of legislation on the protection of economic competition and apply to the Antimonopoly Committee of Ukraine (AMCU) with relevant appeals (complaints) based on this article. In case of legislative violations by citizens, organizations, and business entities during auctions, the public has the right to initiate the review of cases regarding such violations.

Thus, the public can monitor and identify potential violations, as well as submit applications to the Antimonopoly Committee of Ukraine to protect their rights, bowels and the environment.

It is worth noting that according to Article 4 of the Law «On the Protection of Economic Competition» it is the AMCU that exercises state control over compliance with legislation on the protection of economic competition, and safeguards the interests of business entities and consumers from its violations.

According to Part 1 of Article 6 of the Law «On the Protection of Economic Competition», *anticompetitive concerted practices* are defined as concerted practices that have led or may lead to the prevention, elimination, or restriction of competition.

Part 2 of Article 6 of the Law «On the Protection of Economic Competition» defines that *anticompetitive concerted practices* are concerted practices concerning:

- 1) the imposition of prices or other conditions for the purchase or sale of products;

- 2) limiting production, product markets, technical and technological development, investments, or establishing control over them;
- 3) sharing markets or sources of supply by territorial principle, product range, sales or purchase volume, or by a specific circle of sellers, buyers, or consumers, or by other criteria;
- 4) distortion of the results of bidding, auctions, competitions, tenders;
- 5) exclusion from the market or restriction of market access (exit from the market) of other business entities, buyers, or sellers;
- 6) application of different conditions to equivalent transactions with other economic entities, thereby placing them at a competitive disadvantage;
- 7) concluding agreements on the condition that other economic entities accept supplementary obligations which, by their nature or according to trade and other fair business practices, do not relate to the subject matter of these agreements;
- 8) significant restriction of the competitiveness of other business entities in the market without objectively justified reasons.

Moreover, according to Paragraph 1, Part 1 of Article 50 of the Law «On the Protection of Economic Competition», *anticompetitive concerted practices shall be deemed an infraction of economic competition protection legislation.*

Article 13 of the Law «On the Protection of Economic Competition» defines cases of abuse of a monopolistic (dominant) position on the market, which may manifest in the actions or omissions of a business entity occupying a monopolistic (dominant) position on the market, that have led or may lead to the prevention, elimination, or restriction of competition, or the infringement of the interests of other business entities or consumers, which would be impossible under conditions of significant competition in the market.

Abuse of a monopolistic (dominant) position on the market, in particular, shall be recognized as follows:

- fixing such prices or other terms for the purchase or sale of a product that could not have been established if significant market competition existed;

- application of different prices or other different conditions to equivalent transactions with economic entities, sellers, or buyers without objectively justified reasons;
- making the conclusion of contracts subject to acceptance by a business entity of supplementary obligations which, by their nature or according to commercial and other honest customs in business, have no connection with the subject of the contract;
- limiting production, markets, or technical development, which has caused or may cause harm to other business entities, buyers, or sellers;
- partial or complete refusal to purchase or sell goods in the absence of alternative sources of sale or purchase;
- significant restriction of the competitiveness of other business entities in the market without objectively justified reasons;
- obstructing market access (market exit) or eliminating sellers, buyers, or other economic entities from the market.

Thus, the grounds for filing a complaint with the AMCU authorities regarding a specific auction, namely the sale of a special permit for bowels use are the violations defined by Articles 6 and 13 of the Law «On the Protection of Economic Competition».

A special permit for bowels use is a permissive document issued by the Ukrainian Geological Survey which certifies the right of a legal entity or a private individual to use the bowels for the purpose of mineral resources extraction.

According to Part 1 of Article 16 of the Code on Bowels of Ukraine, a special permit for bowels use is granted based on the results of an auction (electronic bidding), and the respective article regulates the procedure for granting special permits for bowels use. If this procedure is violated, particularly due to non-compliance with procedures or discrimination against participants, this can also serve as grounds for filing a complaint with the AMCU.

The detailed procedure for conducting auctions (electronic bidding) for the sale of special permits for bowels use is determined by the Resolution of the Cabinet of Ministers of Ukraine No. 993 dated 23rd of September 2020. Violations of this procedure by participants or organizers (e.g., collusion, artificial inflation or suppression of prices) may serve as grounds for a complaint to the AMCU.

That is violations during electronic bidding for the sale of special permits for bowels use may concern:

- anticompetitive concerted practices among auction participants;
- abuse of a dominant market position;
- violation of auction procedures, namely discrimination against participants or non-compliance with competitive conditions.

If such violations occur, a complaint can be filed with the AMCU on the basis of the specified regulatory acts.

Article 37 of the Law of Ukraine «On the Protection of Economic Competition» stipulates that upon identifying indications of an economic competition law violation, including the consequences thereof, the bodies of the Antimonopoly Committee of Ukraine shall issue an order to launch proceedings.

The Committee's authorities initiate the consideration of a case on violations of legislation on the protection of economic competition based on the grounds defined by Article 36 of the Law of Ukraine «On the Protection of Economic Competition».

EPL investigated how violation cases are handled in practice. Consequently, in response to EPL's request, the AMCU informed that the Committee is currently considering case No. 145-26.13/1-24 regarding signs of a violation committed by METKON PLUS LLC and ROZHNIATIV TORF LLC, as provided for by Article 50 of the Law of Ukraine On the Protection of Economic Competition', in the form of anticompetitive concerted practices relating to the distortion of the results of an electronic auction for the sale of a special permit for subsoil use for the «Pid Borom» deposit, located within Kalush district, Ivano-Frankivsk region, conducted by Ukrainian Geological Survey.

According to data from the AMCU's Department for Investigations of Specific Anticompetitive Concerted Practices, in April 2024, the Antimonopoly Committee investigated 44 auctions to detect suspected bidder collusion, totaling an estimated value of over 200 million UAH. These auctions covered all types of minerals, including coal, limestone, sand, and amber⁸.

⁸ <https://nadra.info/2024/04/amcu-is-checking-44-auctions-of-the-derzhgeonadra-for-possible-collusion-among-the-participants/>

Therefore, the AMCU actively tracks and reviews virtually every conducted auction for the sale of special bowels permits to ensure compliance with economic competition protection requirements.

Based on the results of reviewing cases on violations of legislation on the protection of economic competition, the authorities of the Antimonopoly Committee of Ukraine adopts decisions (Article 48 of the Law of Ukraine «On the Protection of Economic Competition»), including following issues:

- recognition of the commission of a violation of the legislation on the protection of economic competition;

- termination of the violation of the legislation on the protection of economic competition;

requiring a public authority, local government, or administrative-economic management body to repeal or modify its decision or to terminate contracts deemed anticompetitive actions of public or administrative authorities;

- determining that a business entity holds a monopolistic (dominant) market position;

- imposing a fine;

- elimination of the consequences of violations of the legislation on the protection of economic competition, in particular, elimination or mitigation of the negative impact of concerted practices, concentrations of business entities on competition;

- cancellation of the permit for concerted practices in the event of committing actions prohibited under Article 19 of this Law.

Among all possible options for decisions that can be adopted by the AMCU based on the results of the reviewing cases regarding violations during electronic bidding, decisions aimed at environmental protection include obliging the authorized body to cancel or amend a decision adopted by it or to terminate agreements recognized as anticompetitive actions, meaning in this case – invalidating the special permit for bowels use.

To date, there are successful cases in this area: on 11th of September, 2024, the Northern Appellate Economic Court adopted a Resolution upholding the decision of the court of first instance dated 4th of April 2024, which invalidated the permit for the use of the Zniatsivska fusible clay

plot in the Zakarpattia region, purchased at an auction conducted by Ukrainian Geological Survey in violation of antimonopoly legislation⁹.

Prior to that, the Antimonopoly Committee detected signs of distortion of competition in the actions of the auction participants and initiated a case regarding the identified violations. In September 2023, the Administrative Panel of the Northern Interregional Territorial Branch of the AMCU adopted a decision finding the bidders guilty of concerted practices and imposed a fine of 68 thousand UAH on each. Based on this Committee decision, the Deputy Head of the Obolon District Prosecutor's Office of Kyiv filed a lawsuit with the Economic Court of Kyiv to cancel the auction results and the special permit, which was granted by the court and upheld by the court of appellate instance (text of the Resolution)¹⁰.

Therefore, the AMCU authorities act as supervisory bodies for compliance with the legislation on the protection of economic competition, whose decisions to hold auction participants liable can serve as grounds for invalidating auction results and cancelling the special permit for bowels use acquired by disingenuous persons, thereby protecting the environment.

⁹ <https://nadra.info/2024/09/the-scandalous-clays-of-zakarpattia-the-permit-for-the-znyatsivka-site-will-be-canceled/>

¹⁰ <https://reyestr.court.gov.ua/Review/121559862>

SUMMARY

Recommendations for introducing amendments to the effective legislation of Ukraine

Following a comprehensive analysis of the effective legislation on state bodies granting permissions and regulating bowels management, as well as identified corruption risks that enable official misconduct, we submit the following recommendations to amend the current laws of Ukraine. These proposals aim to mitigate corruption risks and establish transparent rules for bowels use.

1. Introduce a statutory framework and legal mechanism requiring prior consent from the landowner or land user before a land plot can be transferred for bowels use.

A potential investor (interested party), when purchasing a special permit from the state, must be assured that no problematic issues regarding the acquisition of a land plot will arise during the subsequent stages of project implementation. This concerns both unpredictable expenses for the buyout of a given land plot – driven by the investor's interest and the landowner's subsequent leverage – and the partial or complete impossibility of development if the landowner categorically refuses to sell their plot under any terms. This particularly applies to legitimate landowners, since according to Article 41 of the Constitution of Ukraine, everyone has the right to own, use, and dispose of their property and the results of their intellectual and creative activity. No one may be unlawfully deprived of the right of ownership. The right of private property is irrevocable.

Therefore, it is essential that the auction documentation package for the sale of a special permit includes prior approvals from the owners or users of privately owned land plots. This will eliminate conflict situations and establish a proper mechanism for acquiring the right to use land plots for bowels use and project implementation in general. Such an initiative is particularly relevant for investors with foreign investments.

Integrating prior consents into the auction documentation mitigates risks and expenses, rules out the granting of permits on nature reserve lands and safeguards transparency in bowels use.

2. Develop and establish at the legislative level an organizational and legal mechanism for the prior reservation (allocation) of land for bowels use needs.

Statutory law *does not impose any obligation on land managers to execute land plot formation procedures (or compile a registry thereof)* before holding an auction for a special permit, even if the extraction of minerals resources requires the allocation of state or municipal lands.

Consequently, there are numerous instances of Ukrainian Geological Survey issuing special permits for subsoil plots on lands that already host nature reserve fund sites, where any subsoil extraction cannot be legally conducted.

Therefore, it is advisable to oblige land administrators, upon the application of Ukrainian Geological Survey as the entity that decides on holding auctions, to establish and approve the boundaries of such land plots by developing technical documentation on land management for land inventory (hereafter – Technical Documentation) required for bowels use. Moreover, according to Article 57 of the Law of Ukraine «On Land Management», the respective technical documentation is developed by decision of the owner (administrator) of the land plot. Such technical documentation includes a list of lands broken down by land categories and types of land, as well as a list of restrictions on the use of the land plot. In other words, *already at this stage it will be visible whether the lands planned for transfer to the bowels user include lands with established restrictions on their use.*

The introduction of a mandatory procedure for the formation and prior reservation of lands for bowels use before issuing a special permit, alongside incorporating land information into the auction documentation package, will provide the bowels user with additional guarantees that such lands do not belong to nature reserve fund lands or other lands with a special legal regime of use. Furthermore, at this stage, public control over the land allocation process for bowels use will be

strengthened, as access to such documents and data will be included in the auction documentation package.

In the case of prior reservation of land for bowels use this will provide potential investors with guarantees that after obtaining a special permit, no obstacles will arise in registering land rights, and there will be no additional factors for corruption abuses by land administrators, thereby creating more transparent rules in the field of bowels use and reducing the level of corruption risks.

3. Strengthen at the legislative level the role of local self-government bodies when adopting decisions on the implementation of projects in the field of bowels use.

According to Part 1 of Article 13 of the Constitution of Ukraine, land, its bowels, atmosphere, water and other natural resources within the territory of Ukraine, the natural resources of its continental shelf and exclusive (maritime) economic zone, are objects of the property right of the Ukrainian people. On behalf of the Ukrainian people, the rights of the owner are exercised by state authorities and local self-government bodies within the limits determined by this Constitution.

According to Part 1 of Article 142 of the Constitution of Ukraine, the material and financial foundation of local self-government consists of movable and immovable property, local budget revenues, other funds, land, and natural resources that are the property of territorial communities of villages, settlements, towns, and districts in cities, as well as objects of their common ownership under the management of district and regional councils.

At the same time, communities, which serve as the centers of local democracy are in no way involved in decision-making regarding extraction on their territory, whereas it is obvious that such extraction can exert a negative impact on the environment, human health, and other aspects of development of this very community.

The decentralization reform in Ukraine manifested in almost all spheres except for bowels use, particularly due to recent legislative innovations. To date, Article 10 of the Code on Bowels of Ukraine defines an exhaustive list of the competence of village, settlement, city, and district councils, as well as councils of united territorial communities in regulating relations in the field of mineral resources extraction. At the

same time, there is no tool of influence at the stage of acquiring bowels use rights either in the Subsoil Code of Ukraine or in other regulatory acts.

Thus, a hypothetical investor enters the community's territory and presents the residents with a *fait accompli* that mineral extraction will take place here, simply because they hold a «special permit». If the extraction, as is frequently the case, carries substantial risks to the environment, public life, and health, then at later stages, the investor inevitably faces severe resistance from the community ranging from protest actions to a multitude of negative consequences, such as lawsuits, criminal proceedings, or project abandonment.

The development and implementation of a transparent organizational and legal mechanism for local councils to approve future projects within community territories can minimize the above-mentioned processes. This could take the form of session decisions following public hearings and consultations with experts, scientists, etc. Furthermore, it is critical to conduct surveys and gather maximum data on the feasibility of the planned project, its pros and cons, environmental risks, and other factors. A corresponding «Report» should be prepared and attached to the decision. Such an «approval» is effectively a «green light» for a hypothetical investor, especially one with foreign investments, regarding further project implementation and, at the same time, a kind of guarantee for successful business development in the given area.

4. Abolish the procedure for obtaining approval from the Ministry of Economy at the stage of putting a bowel plot up for auction (electronic bidding) as ineffective and declarative. Develop and establish an organizational and legal mechanism for conducting a prior assessment of environmental risks at the stage of preparing a bowel plot for an auction for the sale of a special permit and at the stage of drafting a Production Distribution Agreement (PDA).

5. Introduce amendments to Article 45 of the Code on Bowels of Ukraine to mandate that state estimation and mineral resource/reserve assessments apply the United Nations Framework Classification for Resources (UNFC-2009), the CRIRSCO classification, the Petroleum Re-

sources Management System (PRMS), and other global frameworks. This will guarantee the accuracy of assessments, ensure alignment with international requirements, and enable high-standard accounting of mineral reserves and resources.

6. Broaden the statutory authority of the Antimonopoly Committee of Ukraine to initiate legal proceedings for the annulment of special permit auction results.

The AMCU plays a pivotal role in detecting and reviewing violations of the legislation on the protection of economic competition. The public, businesses, and organizations can submit complaints to the AMCU according to Articles 36 and 37 of the Law of Ukraine «On the Protection of Economic Competition» if there are indications of anticompetitive practices, such as collusion between bidders to obtain a special permit for bowels use.

7. Establish in the Law of Ukraine «On the Basic Principles of State Supervision (Control) in the Field of Economic Activity» dated 5.04.2007 No. 877-V the principle of extraterritoriality for conducting planned and unscheduled state control activities according to which state control must be conducted by officials of a territorial state control body located in a different area from the bowels user's activity (without reference to the location of the legal entity), thereby significantly reducing the risks of unlawful agreements between the bowels user and the state control official to distort the results of the state control activity.

8. Establish in the Law of Ukraine «On the Basic Principles of State Supervision (Control) in the Sphere of Economic Activity» dated 5.04.2007 No. 877-V an obligation for officials of the state control body to record the process of conducting a planned or unscheduled random activity or every individual action using audio and video equipment.

9. To delete a paragraph in Article 6 of Law No. 877-V to remove liability for individuals filing groundless complaints, citing compliance with Article 40 of the Constitution of Ukraine. This amendment aims to

remove barriers that currently hinder citizens from reporting violations by business entities.

10. Draft a comprehensive long-term Strategy for Strategic and Critical Raw Materials, clearly setting out Ukraine's short- and long-term objectives and resource requirements itemized by industrial sectors and specific actions required to satisfy domestic demand. The Strategy should specifically address the demand for strategic and critical minerals necessary to advance decarbonization, alongside mapping out supply chains to deliver these raw materials to Ukraine for such purposes.

11. Introduce a mandatory re-issuance of the EIA report to the new bowels user for projects that have changed the bowels user as a result of the alienation of a special permit and/or changes in the consortium of PDA participants, or for other reasons. This procedure will allow the public to participate in the assessment of the project which is frequently amended as the owner may have their own strategy for plot development, and will ensure the strengthening of public oversight over bowels use. Public participation will also help identify cases where bowels, due to a change in the special permit holder, falls under the control of sanctioned legal entities and private individuals. This will contribute to transparency and accountability in the field of bowels use, ensuring compliance with environmental standards.

12. Resume planned and unplanned state control activities for business entities that are bowels users whose economic activity is carried out in territories where active combat operations are not being conducted and which are not temporarily occupied by the Russian Federation, thereby ensuring effective control.

13. Restore access for the public and business entities to the records of the integrated automated system of state supervision (control), which ensures the openness, transparency, and planned nature of state oversight. This will ensure the openness and transparency of state supervision, which is key to the effective management of natural resources.

14. Launch (activate) the reform of the state environmental monitoring system without waiting for the end of war in Ukraine, in order to ensure an appropriate level of state management in the field of environmental protection and regulation of the use of natural resources. Launching the reform without waiting for the war to end will facilitate rapid response to environmental threats, recording of war-related environmental crimes, effective management of natural resources, and mobilization of international support.

15. Implement Decision VII/8r of the Meeting of the Parties to the Aarhus Convention and ensure the full disclosure of the texts of concluded PDAs and their drafts under development, which will provide the interested public with access to these documents.

16. Include in Article 16 of the Code on Bowels of Ukraine clear criteria for determining a part of a deposit as technically unsuitable for use under a special permit, the presence of which allows for the granting of special permits for geological study of a part of a mineral deposit.

17. Amend Part 5 of Article 27 of the Law of Ukraine «On Oil and Gas» establishing an obligation for the Ukrainian Geological Survey to file lawsuits in an administrative court seeking enforcement measures in the form of suspension of special permits for the use of oil and gas bowels in the event that works related to the use of an oil and gas bowels plot cause direct harm to human life or health, or cause significant pollution of the environment, provided that such grounds were established based on the results of state geological control measures.

18. To carry out the Codification of regulatory legal acts governing relations in the field of bowels use and protection. The regulation of bowels use in Ukraine is carried out by a number of laws, by-laws, and resolutions of the Cabinet of Ministers of Ukraine. The main problems of regulatory framework are fragmentation of legislation, duplication of norms, insufficient definition of the legal status of subsoil users, weakness of environmental control, and lack of public oversight. The codification of legislation in the field of bowels use and protection will allow

for reducing regulatory barriers, ensuring transparency of bowels users' activities, and creating an efficient mechanism for natural resource management.

Since corruption in the field of bowels use is a serious problem that hinders the development of the sector, deters investors, and significantly damages the environment, reducing corruption risks in the subsoil use sector is an essential task to ensure transparency, efficiency, and sustainable use of natural resources, and will contribute to environmental protection. The proposed measures will be able to significantly reduce abuses and corruption risks and will strengthen control over the enforcement of legislation in the field of bowels use.

LIST OF ABBREVIATION

AMCU – Antimonopoly Committee of Ukraine
RES – Renewable Energy Sources
GEE – Geological and Economic Evaluation
MPE(C) – Mining and Processing Enterprise (or Complex)
MP – Mining Plant
SLC – State Land Cadastre
SCMR – State Commission of Ukraine on Mineral Reserves
ISM – Industrial Survey Mining
EPL – International Charitable Organization «Environment-People-Law»
USEGSBU – Unified State Electronic Geoinformation System for Bowels Use
EU – European Union
LCU – Land Code of Ukraine
CMU – Cabinet of Ministers of Ukraine
MRB – Mineral resource base
NBU – National Bank of Ukraine
EIA – Environmental Impact Assessment
OECD – Organisation for Economic Co-operation and Development
NRF – Nature Reserve Fund
G&G studies – Geological and Geophysical studies
NSDC – National Security and Defense Council of Ukraine
Special Permit – Special Permit for Bowels Use
TES – Technical and Economical Substantiation
TEE – Technical and economic evaluation
PDA – Product Distribution Agreement
...
CRMA – Critical Raw Materials Act
ESG – Environmental Social Governance

TERMINOLOGY

1. Anticompetitive concerted actions – concerted actions that resulted or may result in the exclusion, prevention, or restriction of competition.

2. Antimonopoly Committee of Ukraine – a state body with special status, the purpose of which is to provide state protection of competition in business activities and in the field of public procurement.

3. Reserves approbation – preliminary certification of mineral reserves by the State Commission on Mineral Reserves on the basis of geological exploration data of previous years.

4. Secondary (processed) geological data – records preserved on physical media or rendered in electronic format across all types and phases of geological survey and bowels use, generated through the processing, interpretation, and analysis of primary geological information.

5. Geological information – information or data recorded on tangible media or displayed in electronic form that on geological structure of the bowels, mineral resources deposits, raw material composition, and properties of rocks, ores, minerals, hydrocarbons, and groundwater, as well as other qualitative and quantitative parameters, indicators, and characteristics of the bowels.

6. Geological exploration of bowels – the conduct of prospecting, exploration, and special works and studies carried out to obtain data on the geological structure of the subsoil, detect and evaluate mineral resources, and ascertain mining-technical and other conditions for the development of mineral deposits and the bowels use for purposes not related to mineral extraction.

7. Geological exploration process – a set of geological exploration works on mapping, forecasting, detection, and geological-economic evaluation of increasingly localized ore-bearing (productive) subsoil plots by the method of successive approximations from ore districts (fields) to ore deposits (blocks).

8. Geological and economic evaluation of a subsoil plot – a periodic analysis of the results of each stage of the geological and techno-economic study of mineral resources of a subsoil plot carried out to establish their reserves based on information regarding the actual results of mineral extraction within such a plot. Detailed (GEE-1), preliminary (GEE-2), and initial (GEE-3) geological and economic evaluations are distinguished.

9. Geological exploration works – a complex of special works and studies carried out for the purpose of geological exploration of the bowels.

10. Mining enterprise – an integrated, technically and organizationally separate property complex of assets and resources for mineral extraction, as well

as the construction and operation of facilities using mining technologies (mines, pit mines, diggings, quarries, open-pit mines, refining plants, etc.).

11. Mining allocation – a part of the bowels granted to bowels users for the commercial development of mineral deposits (for mineral extraction).

12. Land degradation – natural or anthropogenic simplification of the landscape, deterioration of the condition, composition, useful properties, and functions of lands and other natural components organically linked to the land.

13. State evaluation and assessment of mineral reserves – conducted for the purpose of assessing the mineral resource base of the country and ensuring the reliability of estimated mineral reserves and the compliance of their quality indicators with the planned areas of use.

14. State Commission of Ukraine on Mineral Reserves – a state body that conducts the evaluation and assessment of mineral reserves, establishes permanent parameters (quality requirements) for mineral raw materials to calculate mineral reserves in the subsoil, and approves explored reserves.

15. State inventory of mineral deposits – a data management infrastructure for gathering, processing, and archiving records from geological exploration and mining operations, maintained by Ukrainian geological Survey.

16. State Research and Production Enterprise «Geoinform of Ukraine» (State Geological Fund) – is a state-owned enterprise charged with archiving records from geological exploration operations and studies, which has the status of a State Sectoral Archive.

17. Industrial exploitation survey of a deposit – an integral part of works on the geological exploration of bowels aiming to specify the geological features of the deposit, determine the feasibility of further commercial development of the deposit, and assess the economic attractiveness of developing the bowels plot.

18. Unified State Electronic Geoinformation System for Bowels Use – a multifunctional integrated information and communication system that provides information support and maintenance for the bowels use process in Ukraine.

19. Mineral and component reserves – quantities of minerals and components discovered and estimated in situ according to geological study data of uncovered (identified) mineral deposits.

20. Report on geological exploration of bowels – a document that is the result of geological surveys conducted on a bowels plot and contains information on the coordinates, location, area of the bowels plot and other data.

21. Land plot – a part of the earth surface with established boundaries, a specific location, and defined rights associated with it.

22. Land easement – the right to limited paid or free use of someone else's land plot (plots) for certain needs, in particular for the needs of geological ex-

ploration, including industrial survey of minerals with subsequent mineral extraction (commercial development of deposits).

23. Land auctions – a type of auction where the right of ownership or use of a land plot is sold, according to which the right to the land is acquired by the participant who offers the highest price.

24. Quarry – a mining enterprise that extracts metallic and non-metallic mineral resources by the open-pit (opencast) mining method.

25. Quality requirements for mineral raw materials – a combination of cut-off criteria regarding the quality and quantity of bowels mineral raw materials, alongside mining-geological conditions, and technical development parameters for productive layers, the adherence to which during estimation guarantees the maximum recovery and cost-effective extraction of available mineral reserves and resources.

26. Preservation – suspension of the mining enterprise operations for an indefinite period with the possibility of subsequent resumption of its work.

27. Mineral resources – natural mineral formations that are extracted from the bowels of the earth and used in production either directly or after their preliminary processing.

28. Critical raw materials – metallic ores and non-metallic mineral resources of national significance for which there is no substitute as mineral raw materials (at the current level of technological development) and at the same time there is a high risk of supply disruptions of such mineral raw materials to Ukraine.

29. Mineral raw materials – a mineral extracted and processed into commercial products of mining operations.

30. Bowels – the part of the earth's crust located beneath the land surface and the bottom of water bodies, extending to depths accessible for geological exploration and development.

31. Oil and natural gas (fossil fuels) are non-renewable energy sources composed of hydrocarbons, the use of which pollutes the environment.

32. Oil and gas bearing bowels – the part of the earth crust located beneath the land surface and the bottom of water bodies, extending to depths accessible for geological exploration and development, which contains oil, gas and their associated components.

33. Environmental Impact Assessment (EIA) – a procedure undertaken to determine the character, intensity and risk level of the impact generated by any proposed economic activity upon the environment and population health.

34. Assessment of mineral resources and components – determination of the quantity and quality of minerals and components based on the analysis of

favorable geological and economic prerequisites and positive results of geological, geophysical, and other studies.

35. Primary geological information – records and/or data on tangible media obtained during bowels use as a result of studies of geological objects in their natural bedding, samples, specimens, as well as monitoring the state, use, and protection of the bowels.

36. Framework agreement – a document that confirms the consent of two or more parties to cooperate within a certain specified period of time.

37. Land reclamation – a complex of organizational, technical, and biotechnological measures aimed at restoring the soil cover, improving the condition and productivity of disturbed lands (artificial restoration of soil fertility and vegetation cover).

38. Rare metals (Platinum group metals) – platinum group metals, i.e., platinum itself. In addition to platinum (Pt), platinoids include palladium (Pd), iridium (Ir), rhodium (Rh), osmium (Os), and ruthenium (Ru), which are used in the production of optics and display glass.

39. Rare earth metals – metals belonging to the lanthanide group (chemical elements of Group III of the periodic table) that occur rarely and form water-insoluble oxides. These metals are used in medicine, the military industry, and high-tech manufacturing.

40. Mineral deposits – accumulations of mineral substances in the bowels on the earth's surface, in water and gas sources, or on the bottom of water bodies, which in terms of quantity, quality, and bedding conditions are suitable for commercial use.

41. Exploration of mineral deposits – a set of works within a specific exploration area carried out for the detection and geological-economic evaluation of mineral raw material reserves in the bowels.

42. Ore mine (pit mine) – a mining enterprise that extracts metallic (ore) and non-metallic mineral resources by the underground mining method.

43. Borehole (well) – a cylindrical mining excavation created by drills or other drilling equipment.

44. Special permit for bowels use – a permitting document issued by the Ukrainian Geological Survey which certifies the right of a legal entity or an individual to use the bowels for the purpose of mineral extraction and/or geological exploration.

45. Stage of geological exploration works – a part of the geological exploration process determined by its inherent objects of geological study, the purposes and methods of geological exploration works, and the requirements for their final results.

46. Strategic raw materials – metallic ores and non-metallic mineral resources of national significance that are of strategic importance as mineral raw materials, ensuring the sustainable development of the economy, including export potential and national defense capabilities.

47. Associated minerals and components – mineral resources and components extracted alongside the primary minerals, the recovery and commercial utilization of which are technologically feasible and economically viable during the processing of the primary mineral raw materials.

48. Feasibility study – a calculation of the economic viability of a project based on a comparative assessment of costs and benefits of utilization efficiency, as well as the payback period of investments.

49. Production Distribution Agreement (PDA) – a contract whereby the state mandates an investor to undertake prospecting, exploration, and mineral extraction within a specified bowels block(s) for a defined term, alongside associated operations while the investor commits to executing the assigned works at its sole cost and risk, subject to cost recovery and compensation in the form of a share of profit production.

50. Mine – a mining operation that extracts minerals (coal, salts, etc.) through underground operations.

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