



# Enhancing Transparency of the Energy Sector through the EITI Implementation: Success Stories of Ukraine and Germany



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### **DiXi Group**

was founded in 2008 in Kyiv as an independent think tank involved in research and consultations in the energy sphere – on the crossroads of politics, public relations, safety and investments. The advantages of DiXi Group's development include its multitasking and multi-sectoral nature. The Centre combines both professional analysis of performance and reforms in the specific sector and wider tasks – strengthening transparency and accessibility of energy policy, improved governance, cooperation of the government with the public and business. From the time of its foundation and until today, DiXi Group has been working on strengthening transparency in the energy industry.



### **Forum Ökologisch-Soziale Marktwirtschaft/ Green Budget Germany (GBG)**

is an independent think tank that has been researching and lobbying for the expansion of ecological taxation and the removal of environmentally harmful subsidies for many years. GBG is widely recognized among policy-makers, NGOs, companies and trade unions for its expertise in fiscal instruments, environmental and climate policy and foremost for its capacity to develop concepts for regulatory solutions in the field of environmental taxation and the removal of subsidies. Green Budget Germany is part of the civil society group in Germany's EITI Multi Stakeholder Group.

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# Extractive Industries Transparency Law: Successful Case of Ukraine

*The document aimed at EITI countries facing difficulties in voluntary EITI implementation and can serve as a best practice example for countries of strong civil society engagement.*

*Ukraine joined EITI in 2013, the first Report was presented in 2015 and was mainly focused on oil and gas sector. Only after a long way of relevant legislation amendments and the special EITI Law adoption the reporting became regular and ordered.*

## INTRODUCTION

### How EITI works in Ukraine

The **Extractive Industries Transparency Initiative (EITI)** is an independent, voluntarily maintained international transparency standard implemented in 52 countries of the world.

In Ukraine, the government agency responsible for implementing EITI and publishing Reports is the **Ministry of Energy and Environmental Protection of Ukraine**.

One of EITI's key requirements is preparation of annual EITI Reports on payments made by companies and on revenues received by national governments from development of the respective country's natural resources. An EITI Report consists of two parts: contextual information and payment reconciliation, and must cover data for the penultimate full reporting period.

**Contextual information** includes: general information about the industry, the biggest deposits of extractable resources included to the Report's scope of coverage, extraction volumes, information about the sites for which special extraction permits were issued, role of extractive industries in the Ukrainian economy, normative and fiscal regulation of extractive industries, functions and powers of bodies of public administration, etc.

The **payment reconciliation** part includes detailed information about the type and amount of payments made by extractive companies.

The Reports must be prepared and published annually. In 2015, Ukraine prepared and published the **first EITI Report for 2013**. This Report was focused on an overview of the oil and gas sector, and contained information about legislative and fiscal regulation and reconciliation of tax received by the State and payments by companies to the State budget.

The **second Ukraine EITI Report covering the period of 2014-2015** was published in December 2016. This document became much broader, as in addition to information contained in the previous Report, it presented an overview of the following extractive industries: iron, titanium and manganese ores, as well as oil and gas transmission. This Report also included information about special extraction permits, major exploration projects, economic impact of extractive industries, role of the government in extractive industries.

The **third national EITI Report of Ukraine, analyzing performance of the country's extractive sector in 2016**, was published in May 2018. It includ-

ed general information about extractive industries (oil, gas; iron, titanium and manganese ores; refractory and high-melting clays, quartz sand), information about the contribution of extractive industries to the Ukrainian economy, quasi-fiscal transactions in the gas and coal sectors, regional origin of payments, legislative and fiscal regulation, reconciliation of tax received by the State and payments by companies to the State budget.

Preparation of the fourth Report describing development of extractive industries in 2017 is currently underway.

The **EITI National Secretariat** was established in 2015 to coordinate the implementation of EITI in Ukraine. Members of the Secretariat are elected on the basis of an open tender organized by the ministry responsible for the EITI implementation.

The Secretariat is **responsible for**:

- coordinating the process of preparing EITI Reports;
- working with the independent administrator company;
- organizing work procedures of the Multi-Stakeholder Group for the EITI Implementation;
- maintaining contact with reporting institutions;

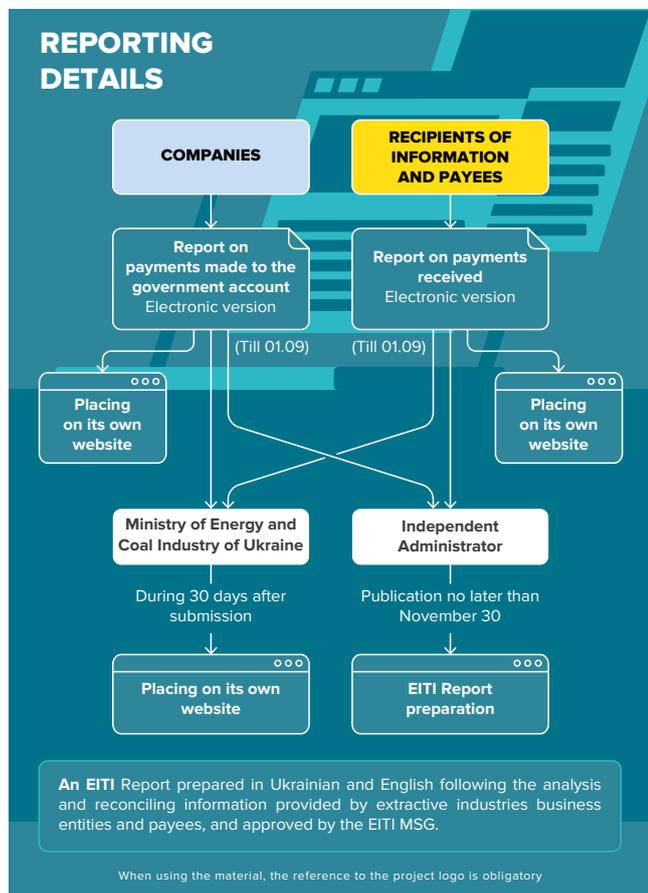
- organizing and coordinating cooperation with international financial institutions, donors and the EITI International Secretariat;
- implementing the communication strategy and coordinating the work in regions.

The **Multi-Stakeholder Group responsible for the EITI Implementation (MSG)** is a permanent group established by the Ministry of Energy and Environmental Protection (the “Ministry”) for the purpose of overseeing the disclosure of information in extractive industries as required by EITI. MSG members are selected independently from each constituency. The final lists of members from companies and civil society are submitted to the Ministry. The Ministry is also responsible for providing information, organizational, material and other support to MSG.

The membership of MSG is formed on the parity basis and comprises representatives of stakeholder groups, i.e. officials of government agencies, representatives of extractive companies and civil society organizations.

MSG’s **scope of powers** includes:

- overseeing the disclosure of information in extractive industries as required by EITI;
- preapproving the forms of report on payments to the state, consolidated report on payments to the state, and report on payments received;
- setting the minimum amount for any payments made by extractive companies are not required to be included to the report on payments to the state and the report on payments received;
- endorsing the procedure of organizing an independent administrator selection contest;
- approving candidates for independent administrator;
- endorsing EITI Reports;
- preapproving the terms of reference for preparation of EITI Reports;
- preparing materials for the hearing of cases concerning administrative fines charged for violation of extractive industries transparency legislation;
- developing recommendations concerning legislative changes aimed to implement and improve mechanisms of targeted spending of funds paid by extractive companies within the territorial communities directly affected by extractive operations;
- deciding that preparation of an EITI Report is not required if a procedure of functioning of an electronic report filing and analysis system has been approved and implemented.



The work on preparing EITI Reports is coordinated by an **independent administrator** – a business entity analyzing and verifying information disclosed by extractive companies and payment recipients. An independent administrator is elected by the Ministry on a competitive basis and then approved by MSG.

The **Energy Transparency Association** was established to promote the EITI Standard in Ukraine at public level and in extractive regions. The main purpose of the Association's activity is to unite the efforts of civil society for cooperation with public authorities and extractive companies to ensure efficient management of natural resources and preserve the environment. Some members of the Energy Transparency Association are also members of MSG in Ukraine.

## Why Ukraine needed the Law?

Implementation of the Extractive Industries Transparency Initiative in Ukraine turned out to be a quite problematic process. This process lacked legal basis: companies reported unsystematically, and public authorities did not make EITI a priority for themselves, because they traditionally followed the rules stipulated in legislative acts. In addition, EITI requires businesses to disclose a wide scope of information which they usually classified as trade secrets. Therefore, EITI standards objectively needed to be made a law.

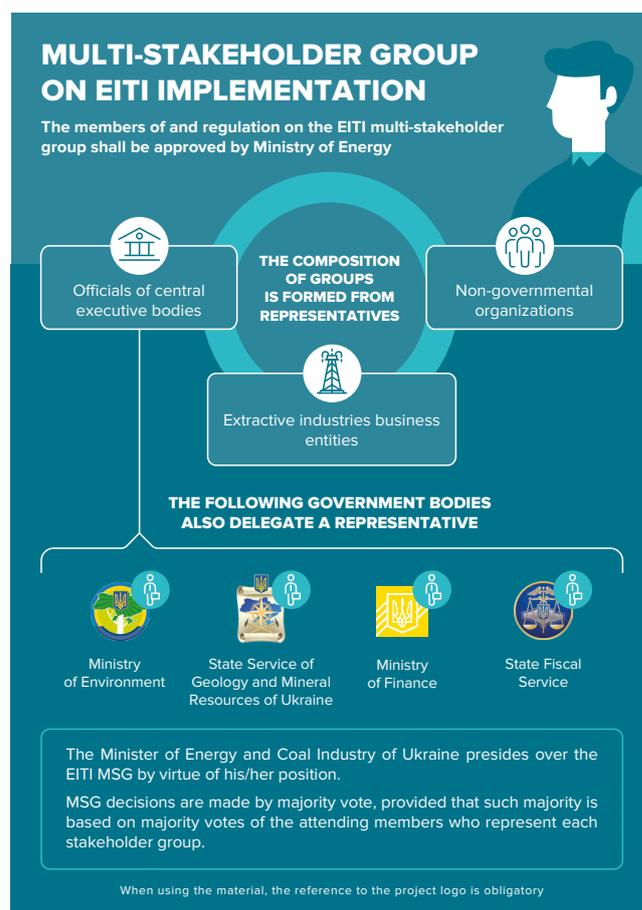
Thus, publication of the first Report became possible only because timely legislative changes were made. Thanks to joint efforts of MPs, experts and the public at large, the Verkhovna Rada passed in June 2015 the Law 521-VIII amending certain legislative acts of Ukraine concerning transparency of extractive industries.

Later, it became obvious that these changes did not bring EITI to the sufficient level of implementation.

The law amended only two legislative acts: Subsoil Code and Oil and Gas Law, contained no institutional framework for MSG and EITI National Secretariat and the no reporting cycle for all stakeholders involved.

In order to rebuild reporting system in the extractive sector and harmonize it with the world's best practices, Ukraine had to pass new laws to regulate the reporting process.

In addition, the Law is important for implementation of a number of EU Directives, including:



- **Transparency Directive 2004/109/EC (TD)** and **Directive 2007/14/EC** containing recommendations concerning harmonization of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market;
- **Accounting Directive 2013/34/EU (AD)** requiring extractive companies to submit annual financial statements consisting of a balance sheet, profit and loss report and notes to financial statements. Oil and gas production, mining and logging companies are required to report to their government the payments they made, regardless of whether or not they operate within the European Economic Area. The decisive factor here is whether the issuer's securities are admitted to trading on the EU's regulated markets;
- and **Transparency Directive Amending Directive 2013/50/EU (TDAD)** harmonizing information disclosure requirements set out in the aforementioned Directives.

Therefore, Ukraine began developing a comprehensive legislation on transparency of extractive industries.

## How Ukraine moved toward passage of the Extractive Industries Transparency Law?

In **September 2009**, Ukraine undertook the commitment to implement EITI, adopting the Resolution 1098 of the Cabinet of Ministers of Ukraine of 30.09.2009 on Ukraine's accession to the Extractive Industries Transparency Initiative. Later on, this intention was documentarily confirmed to the IMF and the EU, and within the framework of the Open Government Partnership.

On **10 October 2012**, the Ministry of Energy and Coal Industry issued the Order 785 establishing the Multi-Stakeholder Group for the EITI Implementation in Ukraine which comprised, on parity basis, representatives of public authorities, companies and the broad public.

On **17 October 2013**, Ukraine received status of the Extractive Industries Transparency Initiative (EITI) candidate country. This positive decision was made at the 25<sup>th</sup> EITI Board Meeting in Côte d'Ivoire.

On **16 June 2015**, Ukraine passed the Law of Ukraine amending certain legislative acts of Ukraine concerning transparency of extractive industries. This law obliged extractive companies to disclose and publish, according to the procedure approved by the Cabinet of Ministers of Ukraine, information about national and local taxes, duties and other payments and about their economic activity, which is needed to ensure transparency of extractive industries.

On **2 December 2015**, the Cabinet of Ministers of Ukraine adopted the Resolution 1039 approving the Procedure of Implementing Transparency of Extractive Industries. This Resolution also approved a template of the survey form for companies operating in the oil and gas sector, forms of annual report on taxes and other duties paid by businesses active in the extractive sector, and information forms for the said report.

On **18 September 2018**, the Verkhovna Rada of Ukraine passed the Law of Ukraine on Transparency of Extractive Industries, which the President of Ukraine signed on 12 October 2018.

This Law was drafted by civil society organizations with participation of other stakeholders (MPs, responsible extractive companies and public authorities of Ukraine).

Thus, DiXi Group experts analyzed legislative acts of various countries of the world, in particular, United Kingdom, Germany, Australia and Canada, selecting provisions which could be the most useful for Ukrainian lawmakers and translating them into Ukrainian. After compiling a "database" of standards used for company reporting and to enhance the transparency of their reports, work has begun on drafting the law. In October 2015, the Ministry of Energy and Coal Industry established a working group for drafting the extractive industries transparency law (Order 638 of 06.10.2015). The Ministry developed this document with the support from DiXi Group and legal advisors financed by GIZ, the International Renaissance Foundation and EITI National Secretariat. Consultations were also provided by experts of Publish What You Pay (PWYP) international coalition, the Natural Resource Governance Institute (NRGI) and EITI Ukraine Independent Administrator.

To ensure passage of the Law, DiXi Group carried out, with the support from USAID and the International Renaissance Foundation, an intensive **advocacy campaign** in support of the aforementioned draft Law, which continued for almost two and a half years. The key message of this campaign was bringing investments and combating the so-called "sleeping licenses", i.e. special extraction permits which have been received but ineffectively used. Since the Law contains a provision requiring extractive companies to report their payments (production rent, land rent and environmental tax) for every special permit, the implementation of this Law allows to find out which companies hold "sleeping licenses" generating minimal payments to the state.

In addition, DiXi Group experts and the Finance Ministry of Ukraine developed payment report forms conformant with European standards and the best international practices, and presented these forms for broad discussion by extractive companies, executive public authorities, territorial communities, bodies of local self-government, etc.

The aforementioned campaign was also focused on disseminating handout materials among the target audience to provide better information to the broad public, journalists and activists about EITI, and to engage MPs. This campaign featured *Wake Up a Sleeping License* infographics based on the classic fairy tale about Sleeping Beauty.

Several promo videos have been prepared, in particular:

- a video address by civil society activists from the Kharkiv, Poltava and Lviv Oblasts to MPs, urging them to support and pass the draft Law (1600+ views);
- a video *Why the Draft Extractive Industries Transparency Law Must Be Passed* (20,000+ views);
- a video explaining the benefits and results of implementing the EITI standard in Ukraine (26,000+ views).

*How to Make Energy Transparent* brochure was published on the basis of materials of “Transparency for Trust. How to Make Energy Affordable” Conference held on 7 November 2017 in Kyiv. The conference was attended by representatives of the United States Agency for International Development (USAID), Council of European Energy Regulators (CEER), Energy Community Regulatory Board (ECRB), Alberta Energy Regulator (Canada), Verkhovna Rada Committee for the Fuel and Energy Complex, Nuclear Policy and Nuclear Security, Ministry of Energy and Coal Industry of Ukraine, State Service of Ukraine for Geology and Extractable Resources, State Agency of Ukraine for Electronic Governance, Ukrenergo NPC and other. This conference became the first event bringing together representatives of public authorities, businesses, expert community and international organizations to discuss new instruments of improving the energy sector’s governance.

The event was organized by DiXi Group with the support from the United States Agency for International Development (USAID).

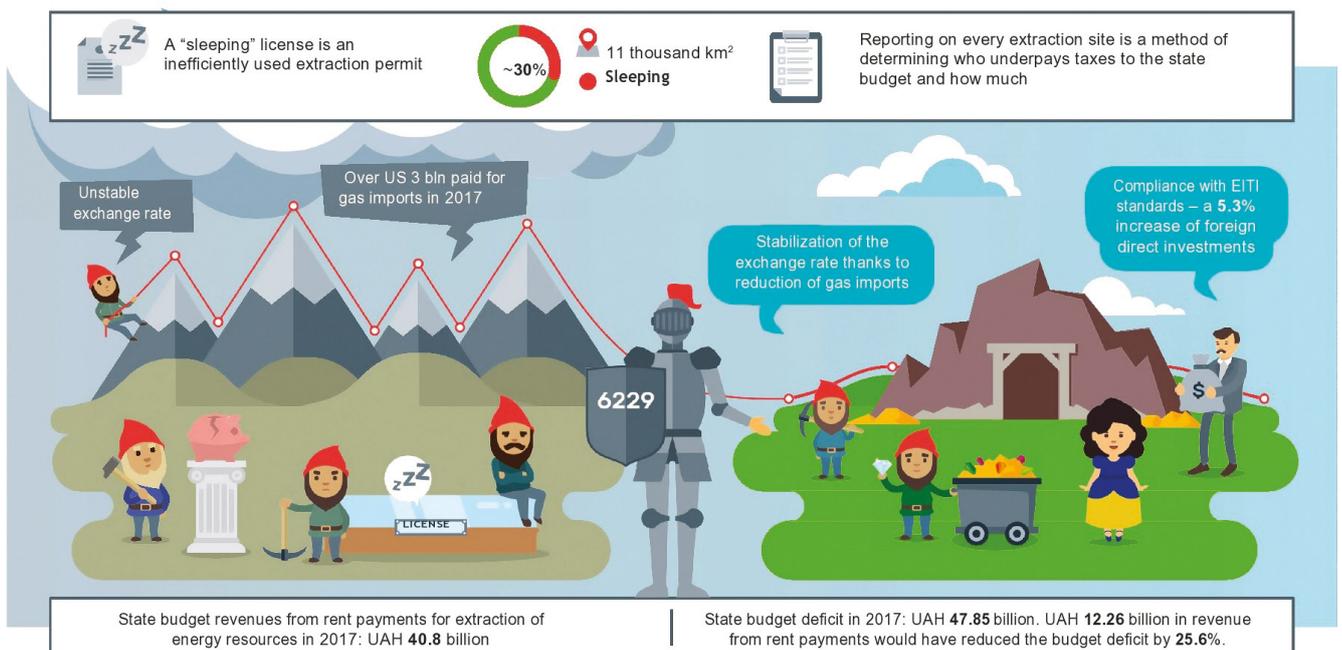
After the Law was passed, the DiXi Group team and their partners started to work on the concept of a new information campaign featuring infographics and posts with detailed information about how this Law would affect all stakeholders in the extractive sector. In particular, Ukrainian- and English-language versions of the infographics about the Law, its key provisions and what changes will take place in the extractive sector after its passage were published in November 2018.

To explain key provisions of the Law to companies and public authorities required to file reports, seven regional round tables on “New requirements to corporate financial and nonfinancial reporting” were held in July-November 2018:

- in Kyiv on 31 July 2018 and 6 November 2018;
- in Lviv on 18 September 2018;
- in Ivano-Frankivsk on 19 September 2018;
- in Kharkiv on 17 October 2018;
- in Poltava on 18 October 2018;
- in Dnipro on 31 October 2018;
- in Kramatorsk on 2 November 2018.

## VOTE FOR No 6229 AND WAKE UP A “SLEEPING” LICENSE

The draft Extractive Industries Transparency Law No 6229 is intended to stimulate state budget revenues, reduce deficit of the state budget and ensure stability of the exchange rate.



"Waking up" "sleeping" oil and gas licenses would have increased state budget revenues by UAH 12 billion

These round tables were attended by representatives of leading Ukrainian energy companies, business associations, research teams, international expert community, civic sector, etc.

## Extractive Industries Transparency Law

The Law of Ukraine on Transparency of Extractive Industries implements the EITI standard in Ukraine, EU legislation and the world's best practices (e.g. Canada's ESTMA law).

Information which this Law requires to publish includes disclosure of actual beneficiaries, contract information, and reports for every special extraction permit. This document requires disclosure of information regarding extractive operations in Ukraine, in particular:

- company payments to the state and local budgets,
- extraction outputs,
- list of extraction projects, etc.

The Law also defines the subjects, mechanisms, terms and procedure of disclosing information regarding extractive operations in Ukraine, legal grounds for formation of MSG, etc. It is important that the Law stipulates liability for violation of information disclosure law, in particular, for the failure to disclose or for providing false information.

A brief summary is provided in the **Annex** hereto.

This Law is important for local stakeholders as an instrument of tracking and possibly penalizing companies violating the law. Thanks to this document, local communities will have **access to information regarding social, environmental and other obligations of extractive companies and their payments**.

Another achievement of the Law is that it now enables public authorities, the society and potential investors to receive **information about the situation in the country's extractive sector and evaluate the government policy on extractive operations**.

The Law also **facilitates fulfillment of Ukraine's commitments under the Association Agreement** between the European Union and the European Atomic Energy Community and their member states,

of the one part, and Ukraine, of the other part, and is aimed to implement extractive industries transparency requirements of Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013, Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013, and Commission Directive 2007/14/EC of 8 March 2007.

### Brief outcomes:

- *voluntary EITI implementation often faces difficulties in reporting procedures as well as in understanding of EITI importance, the legislative framework helps in ordering of reporting and simultaneously means high public acknowledgement of the Initiative;*
- *the legislation should be complex in order to create efficient framework for all EITI implementation components: reporting, institutional capacities, MSG, responsibilities of stakeholders etc.;*
- *Ukrainian case showed the input of civil society is really important: advocating campaigns and active involvement lead to successful Law adoption.*

### FURTHER INFORMATION

Website of the Ukrainian EITI: <http://eiti.org.ua/>

2016 EITI Report: <http://eiti.org.ua/documents/tretij-zvit-ipvh/>

Public opportunities: <http://eiti.org.ua/documents/ipvh-mozhlyvosti-dlia-hromadian-2017/>

Ukraine Validation 2017: <https://eiti.org/document/ukraine-validation-2017>

### IMPRINT

**Responsible for this publication:** Analytical Center DiXi Group

Executive Director: Olena Pavlenko

Authors: Olga Polunina and Sergii Balan, October 2019

# Environmental Reporting in EITI: German Experience

*Consideration of environmental impacts is central to meaningful public debates on natural resource governance. The new EITI standard 2019 requires to disclose environmental payments if they are mandated by law, regulation or contract. Further, the new standard encourages countries to disclose information on the management and monitoring of the environmental impact of the extractive industries. This paper discusses how the new requirements could be implemented at country level and how the standard could further evolve, drawing from experience with environmental reporting in the German EITI.*

## INTRODUCTION

Extraction of natural resources has significant impacts on the environment. Information on these impacts, on its management and its monitoring, are central to meaningful public debates on natural resource governance. The new standard 2019 contains requirements and recommendations on how to integrate environmental data and information into EITI reporting. Prior to this revision, the EITI Standard did not include any reference to the environment<sup>2</sup>. This evolution of the standard reflects the fact that over half of EITI countries have already included environmental issues as part of their EITI reporting (EITI 2017). The new revisions will help increase levels of environmental information available to accountability actors in EITI countries.

Despite not required by the standard 2016, German civil society has strongly argued to include environmental data into Germany's first EITI report, published in 2017.

This paper will first discuss the new requirements of the 2019 standard and its possible implications for national implementation. It will then present experience from Germany's EITI reporting, including information on the legal framework, environmental taxes and subsidies granted to the extractive sector. The last section will look at opportunities for further evolution of the standard with regard to environmental issues.

## REQUIREMENTS OF THE EITI STANDARD 2019

Among other revisions, the 2019 standard included provisions on environmental reporting by expanding the scope of requirement 6 on social and economic spending. The new wording regarding disclosure of payments is as follows (EITI 2019a):

“6.1 Social and environmental expenditures by extractive companies. [...]

- a. *Where material payments by companies to the government related to the environment are mandated by law, regulation or contract that governs the extractive investment, such payments must be disclosed.*
- b. *Where the multi-stakeholder group agrees that discretionary social and environmental expenditures and transfers are material, the multi-stakeholder group is encouraged to develop a reporting process with a view to achieving transparency commensurate with the disclosure of other payments and revenues. “*

Therefore, according to the revised requirement, environmental payments to the government will have to be disclosed by default. Hence as for any other payment stream, Multi-Stakeholder Groups (MSGs)

<sup>2</sup> <https://resourcegovernance.org/blog/major-new-EITI-disclosure-requirements>

will have to carefully assess and discuss materiality of these payments related to the environment. Finally, they will need to make a decision on the materiality threshold that should be consistent to the threshold applied to other revenue streams.

## Which payments may be considered as environmental payments under EITI?

To answer this question, it is worth looking at environmental payments that have already been disclosed in EITI reports. The EITI secretariat released a report on this issue already in 2017 (EITI 2017); it shows that 28 implementing countries have engaged in some form of reporting on environmental issues. 22 of these countries disclose environmental payments made by extractive companies to the government or to dedicated funds and 15 countries even reconcile the payments. Payments disclosed included:

- mining rehabilitation fees
- fees for waste, water use and pollution
- payments for CO<sub>2</sub> and NO<sub>x</sub> emissions, gas flaring
- payments for environmental licenses
- general contributions into environmental protection agencies.

For example, the 2015 EITI Report of Mongolia reconciles three fees for air pollution, water use and water pollution. The Norwegian 2015 report covers CO<sub>2</sub> and NO<sub>x</sub> taxes. The 2014-15 EITI Report of Ukraine reconciles the environmental tax disaggregated by sectors, such as oil and gas, metal ores mining and coal mining; and by company (EITI 2017).

Besides the changes made in section 6.1 of the standard, the 2019 revision led to a completely new section on reporting of environmental impact of extractive industries:

*“6.4 Environmental impact of extractive activities.*

*Implementing countries are encouraged to disclose information on the management and monitoring of the environmental impact of the extractive industries. This could include:*

- a. An overview of relevant legal provisions and administrative rules as well as actual practice related to environmental management and monitoring of extractive investments in the country. This could include information on environmental impact assessments, certification schemes, licences and rights granted to oil, gas and mining companies, as well as information on the roles and responsibilities of relevant government agencies in implementing the rules and regulations. It could further include information on any reforms that are planned or underway.*
- b. Information on regular environmental monitoring procedures, administrative and sanctioning processes of governments, as well as environmental liabilities, environmental rehabilitation and remediation programmes.”*

This new provision of the standard is hence a recommendation, encouraging MSGs to discuss whether environmental information could be useful in the national context. In Germany, part of what is recommended by the new standard was already included in the EITI reporting. This so-called “contextual information” is presented in the next section.

## LEARNING FROM EXPERIENCE: THE CASE OF GERMANY

Germany joined EITI 2014 and completed its first report in 2017, covering the financial year 2016. The report and its updated version, which was finalized in October 2018, formed the basis for validation of Germany, which commenced in 2018. In May 2019, the EITI international board concluded that Germany is an EITI-compliant country, fulfilling all requirements of the (2016) standard.

## Description of environmental legislation and environmental-related revenue streams

Germany applied the standard 2016 for the first report, and hence there were no mandatory requirements or recommendations to consider environmental context. But civil society constituency in Germany<sup>3</sup>

<sup>3</sup> Transparency International Deutschland e.V. (TI), Forum on Environment & Development (FUE), Open Knowledge Foundation Deutschland e.V. (OKF), Green Budget Germany (FÖS e.V.) and the trade Union Industriegewerkschaft Bergbau, Chemie, Energie (IG BCE)

strongly argued for integration of environmental aspects of natural resource extraction right from the beginning, as impacts of the extractive sector on soil, water, air and climate are controversially discussed in Germany, especially with regard to extraction of fossil fuels. One reason for the efforts made by the CSOs on this matter is the fact that two NGOs with specific focus on environmental policy (GBG and FUE) are part of the civil society constituency. From an environmental point of view it is important to not only address the benefits (contribution to state revenues through taxes and fees), but to also look at the environmental and social costs related to the extractive industry. To which extent do extractive companies pay for these costs? Are costs internalized, e.g. through royalties (FÖS 2016)? How can it be ensured that companies pay for the rehabilitation of sites? Do companies receive subsidies for the production and consumption of fossil fuels, which are environmentally harmful (ODI u. a. 2017)?

Besides an overview of the Federal Nature Conservation Act, which is the general legal environmental framework for economic activities including mining, the first German EITI report covers contextual information related to environmental payments:

### Environmental taxes and fees

- Fees for water usage: Most Federal States levy consumption-related fees for the use of ground and surface water. The fee level varies greatly between the German states. There are several exemptions for extractive (and other) water users.

Royalties have to be paid for free-to-mine natural resources such as fossil fuels (except lignite and hard coal) and metals. There are no royalties for privately-owned natural resources. If the extracted free-to-mine natural resources can be used for financial gain, the permit holder must pay extraction royalties. The standard rate for extraction royalties is 10% of the market value. However, the federal states (Länder) may stipulate different regulations in their legislation for the calculation of royalties under certain conditions. As a result, royalties vary greatly between German states and mining activity. There are high rates on oil and gas in Lower Saxony and Schleswig-Holstein, and no royalties for lignite and hard coal. The total volume of royalty payments is so far rather low: In 2016, the total amount was approx. 232 Mio. Euro, which is around 0.02% of total state income.

For the first time, an overview of the relevant fee levy rates in the natural resources sector is publicly accessible on a website of the German Federal Environment Agency provides (UBA 2018), based on MSG initiative, and the EITI report links to the website.

- Excise taxes for energy and electricity: Energy and electricity taxes can be considered as environmental taxes. Taxes on electricity were introduced as part of the so-called “ecological tax reform” in 1999 with the objective to incentivize economic use of electricity. In addition, energy taxes for heating were increased or newly introduced as part of the reform (FÖS 2017).

### Costs for the rehabilitation of sites

- Legal framework: The report provides information on the legislation with regard to the obligation to rehabilitate the mining site after closure and compensatory measures on external surfaces (e.g. reforestation).
- Compensation payments: If compensation measures are not possible, companies need to pay compensation payments to the local nature conservation agency which has to use it for compensation measures.
- Follow-up costs for rehabilitation of sites: Companies are obliged to create and maintain long-term accounting provisions (‘financing provisions’) for rehabilitation of the sites. Provisions made by those companies which must publish their annual financial statements are shown at <http://www.bundesanzeiger.de>. Authorities can ask for other implementation securities (i.e. cash, payment to a fund etc.).

### Subsidies

- Subsidies for hard coal: Hard coal mining has been subsidized over decades in Germany, because it was not competitive. At the end of 2018, the last hard coal mine was shut down. Adaptation payments (payments to employees that lost their job due to closure of mines) will continue until 2027.
- Tax exemptions for energy and electricity use: Tax exemptions are granted to the extractive sector and the manufacturing industry. As a recent development, Member States of the European Union have an obligation to annually publish comprehensive information on the granting of state aid on a detailed aid website; this applies to tax concessions from July 1, 2016 (detailed data not yet included in the first report).

In addition, the report also covers renewable energies. Renewables make a large and growing contribution to Germany's energy supply. The contribution to the electricity sector is particularly high; more than 30 % of the gross electricity consumption is covered by renewable sources. The expansion of renewable energies helps to avoid greenhouse gas emissions and reduces the use of fossil energy sources, which are mainly imported.

When the Board took its positive decision on Germany's validation, it acknowledged this approach to include environmental information (EITI 2019b):

*"[...] The EITI Board commended Germany's efforts to increase the relevance of EITI implementation by addressing environmental aspects, subsidies and renewable energy [...]."*

This is also reflected in the statement issued by the International Secretariat (EITI 2019c):

*"Germany's 2016 EITI Report covered environmental aspects and subsidies. It explained how environmental impacts are compensated for and how the state can guarantee that the cost of rehabilitating sites does not fall on the taxpayer. The report also disclosed the amount of water consumed by the extractive sector in each state and described the rules and fees for water usage. [...] The German EITI has also shed light on subsidies received by the extractive sector. Hard coal production in Germany is no longer competitive due to high production costs, and the sector has been subsidised. In 2007, an agreement was reached to phase out subsidies in a socially responsible manner by the end of 2018. The EITI Report showed that in 2016 subsidies to the coal sector totalled nearly EUR1.3 billion. In the same year, total gross government revenue from the extractive sector was less than EUR500 million."*

Thus, one of the key factors for successful validation was the inclusion of contextual environmental information as this is a central issue for the national debate.

## Disclosure and reconciliation of payments

Environmental payments and environmentally harmful subsidies were not part of the payment streams that were reported by companies and reconciled in Germany's first EITI report as the MSG could not find a consensus on its inclusion. Companies argued that this is not at core of EITI reporting. Given the requirements of the new standard, this argument does not

seem to be valid anymore. Indeed, with the new standard, disclosures of material environmental payments will become a central part of EITI reporting. The new standard will be applied from Germany's third report on. Hence, we argue to report environmental taxes paid and subsidies granted to the extractive sector as a measure to receive a comprehensive picture on the level of internalization of external costs. This data is so far not available and hence this could be a part where EITI could really add value to the German debate.

From our point of view, under the new standard the disclosure of the following revenue streams should be included in Germany's EITI reports:

- Fees related to the usage and disposal of water and fees for waste disposal. So far, any publicly-accessible source of information on the revenue from water fees paid by the natural resources sector does not exist.
- Energy and electricity taxes (incl. exemptions granted to the extractive companies). This information is so far not publicly available but is of interest to the public since the extractive sector is a large consumer of electricity and energy.
- Follow-up costs for rehabilitation of sites: This is particularly important in the case of lignite extraction, where rehabilitation costs are estimated to reach several billions of Euro. There is a lack of transparency regarding the appropriateness of the accounting provisions made by the companies and a public debate on whether the state should ask for other implementation securities to ensure that rehabilitation costs are covered even in case of insolvency (FÖS 2019).
- Fees for obtaining environmental licenses
- Compensation payments if material

## FURTHER EVOLUTION OF THE STANDARD

As the German case and many others demonstrate, reporting of environmental aspects has already been practiced in many implementing countries. It adds value to the public debate and particularly helps local communities affected by mining operations. The new standard responds to this development and contains requirements to include environmental data and contextual information into EITI. It remains to be seen how the new requirements will be implemented by the EITI countries and how they will be assessed in the validations.

On a longer perspective, it seems crucial that EITI further opens itself to the discussion around climate change. If the world wants to remain under 1.5°C as agreed in the Paris Agreement, a significant transformation of our fossil-fuel dominated world to low carbon economies is necessary. Ultimately, this means that companies extracting fossil fuels will need to change their business models since extraction of fossil fuels will no longer be viable. State budgets depending on payment streams from oil, gas and coal will face significant risks of getting blown off (GIZ/adelphi 2017). EITI could play a major

role in supporting the transformation, e.g. through the inclusion of climate risks into EITI reporting, as a wide coalition of NGOs called for already in 2015. As the authors state,

*“it is of material interest to citizens when holding their governments and extractive companies to account, whether or not extraction can proceed in this new environment” (Client Earth u. a. 2015).*

At that time, the international secretariat was reluctant to discuss the proposal (EITI 2015). Now may be the right time now to revise this decision.

## FURTHER INFORMATION

- Website of the German EITI: <https://www.d-eiti.de/en/>
- 2016 D-EITI Report: [https://eiti.org/sites/default/files/documents/2016\\_germany\\_eiti\\_report.pdf](https://eiti.org/sites/default/files/documents/2016_germany_eiti_report.pdf).
- Data portal of D-EITI: <http://www.rohstofftransparenz.de/en/#start>

## IMPRINT

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**Executive Director:** Uwe Nestle

**Authors:** Florian Zerzawy and Ahmad Mawas, November 2019

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the LAW of UKRAINE

# **ON ENSURING TRANSPARENCY IN EXTRACTIVE INDUSTRIES**

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unofficial translation and adaptation provided by the "Transparent Energy" Project and  
the International Renaissance Foundation

Kyiv, October 2018

# LAW OF UKRAINE

## On Ensuring Transparency in Extractive Industries

This Law defines the legal framework for the regulation and organization of collection, disclosure, and dissemination of information to ensure transparency and corruption prevention in extractive industries in Ukraine.

This Law is aimed at fulfilling Ukraine's international obligations concerning its accession to the Extractive Industries Transparency Initiative (EITI) and implementing the European Union's legislative acts with respect to increasing business transparency in extractive industries, namely Directive 2013/34/EU of the European Parliament and of the Council on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC, and Directive 2013/50/EU of the European Parliament and of the Council amending Directive 2004/109/EC of the European Parliament and of the Council on the harmonization of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, Directive 2003/71/EC of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading and Commission Directive 2007/14/EC laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC.

### Section I

#### GENERAL PROVISIONS

##### Article 1. Terms and definitions

1. As used in this Law, the terms listed below shall have the following meanings:

'EITI multi-stakeholder group' means a permanent group established by the central executive authority responsible for the formation of public policy for energy sector and coal industry to oversee information disclosure in extractive industries in accordance with the EITI requirements;

'extractive industries' means industries related to geological study of subsurface resources, including pilot commercial development of mineral deposits of national significance, extraction of minerals of national significance, performance of work (activities) under a production sharing agreement for minerals of national significance,

sale of extracted products, and transportation of hydrocarbons by pipelines, including for the purpose of their transit;

‘EITI report’ means a report produced by an independent administrator based on analyzing and reconciling information provided by extractive industry businesses and payees, in accordance with the technical specifications and within the EITI framework;

‘report on payments received’ means a document containing summary information on payments made or payable to a payee by a specific extractive industry business in the reporting period;

‘report on payments to the government’ means a document containing summary information on extractive industry businesses’ activities necessary to ensure transparency in extractive industries in the reporting period and detailed information on taxes, duties, and other charges paid or payable to payees by such businesses in the reporting period;

‘reporting period’ means the calendar year to which the summarized information on an extractive industry business’s financial condition and results refers;

‘Extractive Industries Transparency Initiative’ means the independent standard of extractive industries transparency voluntarily maintained by Ukraine internationally as adopted by the EITI International Secretariat and approved by the EITI International Board;

‘consolidated report on payments to the government’ means a document that contains extractive industry parent company consolidated information on activities of extractive industry businesses controlled by such parent company and information on taxes, duties, and other charges paid or payable to payees by such businesses;

‘extractive industry parent company’ means a company registered in Ukraine and controlling at least one extractive industry business;

‘independent administrator’ means a business entity that analyzes and reconciles information provided by extractive industry businesses and payees, in accordance with the technical specifications, and produces an EITI report;

‘payee’ means: a government authority, a public authority of the Autonomous Republic of Crimea, or a municipal government body that receives payments; any government-owned or municipally owned enterprise, institution, organization, or corporation in whose authorized capital the government or a community owns more than 50 percent of shares (equity interests); and a corporation in which 50 or more percent of shares (equity interests) belong to another corporation in whose authorized capital the government or a community owns 100 percent of shares (equity interests);

‘payment’ means any cash or in-kind payment made by an extractive industry business in connection with its activities in extractive industries to the national budget or local budgets, compulsory national social and pension insurance funds, or directly a payee, namely:

- national taxes and duties, local taxes, and national contributions, except for value added tax and individual income tax;
- dividends paid to the government;
- part of profitable products;
- payments (distributions, premiums, or bonuses) under contracts, agreements, and other juristic acts not prohibited by law that govern legal relationships between parties with respect to the use of subsurface resources, namely joint venture agreements, production sharing agreements, and integral property complex lease or concession agreements;
- fees and other payments for issuing, extending, renewing, issuing duplicates of, amending, suspending, or terminating special permits for subsurface use, licenses, and other documents permitting the use of subsurface resources; and
- other payments made by disclosure entities for the use of subsurface resources, namely: fee for acquiring rights to geological information, fee for the use (temporary occupation) of land plots, fee (tariffs) for accessing infrastructure facilities, expenses for infrastructure improvement, lease payments, and financial sanctions for violations of the legislation governing the use of subsurface resources;

‘project activities’ means activities relating to geological study of subsurface resources, including pilot commercial development of mineral deposits of national significance, extraction of minerals of national significance, performance of work (activities) under a production sharing agreement for minerals of national significance, and sale of extracted products under a separate special permit for subsurface use and/or under a separate agreement on the terms of subsurface use, production sharing agreement, joint venture agreement, or another agreement that imposes an extractive industry business’s obligations to the government in relation to the subsurface use, as well as transportation of hydrocarbons by pipelines under a contract, including for the purpose of their transit;

‘extractive industry business’ means an individual entrepreneur or a legal entity using subsurface resources for geological study, including pilot commercial development of mineral deposits of national significance, extraction of minerals of national significance, performance of work (activities) under a production sharing agreement for minerals of national significance, and transportation of hydrocarbons by pipelines, including for the purpose of their transit;

‘technical specifications’ means requirements to be met when preparing an EITI report, in particular for determining the scope of such a report and coordinating interim results and an independent administrator’s responsibilities during each phase of its preparation, which are an integral part of the contract with the independent administrator;

'subsurface use agreements' means agreements on the terms of subsurface use, production sharing agreements, joint venture agreements, or other agreements under which project activities are carried out.

2. As used in this Law, 'ultimate beneficial owner (controller)' shall have the meaning assigned to it in the Law of Ukraine On Preventing and Countering Laundering of the Proceeds of Crime, Terrorist Financing, and Financing of Proliferation of Weapons of Mass Destruction. As used in this Law, 'control' and its derivatives shall have the meanings assigned to them in the Law of Ukraine On Protection of Economic Competition.

3. Other terms shall have the meanings set forth in other laws of Ukraine.

## **Article 2. Scope**

This Law shall apply to all extractive industry businesses and extractive industry parent companies regardless of their legal form and ownership type, the central executive authority responsible for the formation of public policy for energy sector and coal industry, the central executive authority implementing the public policy for geological study and rational use of subsurface resources, and payees.

## **Section II**

### **INFORMATION DISCLOSURE OBLIGATIONS**

#### **Article 3. Purpose of information disclosures**

1. The purpose of information disclosures in extractive industries is to provide the public with access to complete and objective information on extractive industry businesses' payments to payees and create preconditions for such businesses to use minerals of national significance in a socially responsible way and for public awareness and discussion of issues related to the use and management by the government and communities of minerals of national significance.

#### **Article 4. Disclosure entities**

1. The following shall be disclosure entities:

- extractive industry businesses;
- extractive industry parent companies;
- payees;
- central executive authority responsible for the formation of public policy for energy sector and coal industry; and

- central executive authority implementing the public policy for geological study and rational use of subsurface resources.

2. Disclosure entities shall disclose information in accordance with the requirements and within the scope and time frames established by this Law and other legislative acts of Ukraine.

## **Article 5. Methods of information disclosure**

1. Information shall be disclosed in the following manner:

1) for extractive industry businesses and extractive industry parent companies:

- by submitting a report on payments to the government and, where required by law, a consolidated report on payments to the government to the central executive authority responsible for the formation of public policy for energy sector and coal industry and to an independent administrator by sending it in electronic form or, where not possible, in paper form by mail with the enclosure list, or through the electronic system for reporting submission and analysis (if available);
- by placing a report on payments to the government and, where required by law, a consolidated report on payments to the government in electronic form on its own website (if available);
- by providing information on essential terms of subsurface use agreements together with appropriate extracts from such agreements to the central executive authority responsible for the formation of public policy for energy sector and coal industry or by entering such information in the electronic system for reporting submission and analysis (if available);

2) for payees:

- by submitting a report on payments received to the central executive authority responsible for the formation of public policy for energy sector and coal industry and an independent administrator by sending it in electronic form or, where not possible, in paper form by mail with the enclosure list;
- by placing a report on payments received in electronic form on its own website (if available) or by entering it in the electronic system for reporting submission and analysis (if available);

3) for the central executive authority responsible for the formation of public policy for energy sector and coal industry:

- by placing a report on payments to the government and, where required by law, a consolidated report on payments to the government in electronic form, a report on payments received in electronic form, an EITI report in electronic form, and information on essential terms of subsurface use agreements

together with relevant extracts from such agreements (except for agreements on the terms of subsurface use) on its official website or by entering it in the electronic system for reporting submission and analysis (if available);

4) for the central executive authority implementing the public policy for geological study and rational use of subsurface resources:

- by placing information about applications for special permits for subsurface use and applications for the preparation of subsurface sites for an auction for the sale of special permits for subsurface use received from extractive industry businesses and about special permits for subsurface use issued and agreements on the terms of subsurface use concluded (with relevant annexes, including contractual work programs) on its official website;

5) for extractive industry businesses, extractive industry parent companies, and payees:

- by providing information on payments upon request of the central executive authority responsible for the formation of public policy for energy sector and coal industry and of an independent administrator.

2. All electronic versions and copies of documents referred to in part one of this Article shall be sent or placed in such format that allows their automated electronic processing, unrestricted and free access to them, and their subsequent use.

## **Article 6. Report on payments to the government**

1. A report on payments to the government shall contain the following information:

- the total amount of payments;
- the total amount for each payment type;
- the total amount of rent on mining-related subsurface use, land tax, and environmental tax paid for each specific project activity;
- the total amount of rent on mining-related subsurface use, land tax, and environmental tax paid for each payment type for each specific project activity;
- payment currency;
- the reporting period in which payments were made;
- a description of the extractive industry activity in connection with which payments were made;
- a list of specific types of project activities directly or indirectly conducted and main characteristics of such activities;

- participation in social projects or programs and the total amount of payments for each social project or program, separately indicating those implemented on production sites;
- production output for each relevant project activity type;
- average number of registered personnel who have worked during the reporting period;
- amounts of financing and aid received from government authorities and municipal government bodies, including entities under their control, in particular amounts of government aid to business entities;
- information on ultimate beneficial owners (controllers) in the reporting period in accordance with the Law of Ukraine On Preventing and Countering Laundering of the Proceeds of Crime, Terrorist Financing, and Financing of Proliferation of Weapons of Mass Destruction; and
- the audit report for the reporting period (for disclosure entities that are required by law to have their financial statements audited).

An integral part of a report on payments to the government shall be reconciliation reports for taxes, duties, and single contribution for compulsory national social insurance paid between an extractive industry business and a payee, where applicable.

2. Disclosure entities shall prepare a report on payments to the government in such scope and form as previously approved by an independent administrator and the EITI multi-stakeholder group or, if the electronic system for reporting submission and analysis is in place, by the EITI multi-stakeholder group and further approved by the Cabinet of Ministers of Ukraine.

3. Any payment made as a lump sum or in several installments shall not be included in a report on payments to the government if the amount of such payment during the reporting period is less than the amount determined by the EITI multi-stakeholder group.

4. When implementing project activities under a joint venture agreement, all extractive industry businesses that participate in the joint venture shall prepare a report on payments to the government to the extent of the joint venture agreement regardless whether any payment is made by such businesses directly or on their behalf by another participant in the joint venture and regardless of such businesses' participation (share) in the project activities.

5. In the case of an in-kind payment, such payment shall be reported in value and quantity terms with corresponding notes to explain how the payment amount was determined.

6. When disclosing the payment details referred to in this Article, the content and

not the form of payments or relevant business activities shall be reported. Payments and business activities may not be artificially separated or combined to avoid application of the requirements of this Law.

### **Article 7. Report on payments received**

1. A report on payments received shall include the following information:

- the total amount of payments;
- the total amount for each payment type;
- the total amount of payments for each project activity type;
- the total amount for each payment type for each specific project activity;
- payment currency;
- the reporting period in which payments were made; and
- the amount of financing and aid by a payee to an extractive industry business.

2. Disclosure entities shall prepare a report on payments received in such scope and form as previously approved by an independent administrator and the EITI multi-stakeholder group or, if the electronic system for reporting submission and analysis is in place, by the EITI multi-stakeholder group and further approved by the Cabinet of Ministers of Ukraine.

3. Any payment made as a lump sum or in several installments shall not be included in a report on payments received if the amount of such payment during the reporting period is less than the amount determined by the EITI multi-stakeholder group.

### **Article 8. Requirements for establishing the EITI multi-stakeholder group**

1. In order to oversee information disclosures in extractive industries in line with the EITI requirements, the central executive authority responsible for the formation of public policy for energy sector and coal industry shall establish the EITI multi-stakeholder group.

2. The EITI multi-stakeholder group shall be guided by the following main principles in its operation:

- free discussion of matters and decision-making;
- publicity and transparency;
- openness;
- parity in representing stakeholders' interests; and

- compliance with the Ukrainian legislation and EITI standards.

3. The members of and regulation on the EITI multi-stakeholder group shall be approved by the central executive authority responsible for the formation of public policy for energy sector and coal industry.

4. The EITI multi-stakeholder group members shall be appointed on a parity basis from among representatives of stakeholder groups, namely officials of central executive authorities, representatives of extractive industry businesses, and non-governmental organizations.

5. The Minister of Energy and Coal Industry of Ukraine shall chair the EITI multi-stakeholder group by virtue of his or her position. Each of the central executive authority responsible for the formation of public environmental policy, central executive authority implementing the public policy for geological study and rational use of subsurface resources, and the central executive authority implementing the public tax and customs policy shall also delegate one representative to the EITI multi-stakeholder group.

6. The EITI multi-stakeholder group's decisions shall be taken by a majority vote of its members, provided that such majority includes majority votes of the attending members of the EITI multi-stakeholder group who represent each stakeholder group referred to in part four of this Article. Decisions of the EITI multi-stakeholder group shall be set out in the minutes and signed by the chairperson of the EITI multi-stakeholder group.

7. The powers of the EITI multi-stakeholder group shall include:

- overseeing information disclosures in extractive industries in line with the EITI requirements;
- pre-approving the form of a report on payments to the government, consolidated report on payments to the government, and a report on payments received;
- setting a threshold amount below which any payment made by an extractive industry business as a lump sum or in several installments shall not be included in a report on payments to the government and a report on payments received for the corresponding reporting period;
- approving the procedure for conducting a competition for electing an independent administrator;
- approving the candidacy of an independent administrator;
- approving an EITI report;
- pre-approving technical specifications for the preparation of an EITI report;
- preparing materials for consideration of cases over imposing administrative and economic fines for violations of extractive industry transparency

legislation;

- producing recommendations for amending legislation to introduce and improve mechanisms for the designated use of funds paid by extractive industry businesses in the form of payments in communities directly affected by activities in extractive industries;
- deciding that an EITI report need not be prepared where the electronic system for reporting submission and analysis is introduced and its operation procedure is approved; and
- other powers as laid down in this Law.

8. The central executive authority responsible for the formation of public policy for energy sector and coal industry shall provide informational, organizational, material, and other support to the EITI multi-stakeholder group.

### **Article 9. Consolidated report on payments to the government**

1. Extractive industry parent companies that are registered in Ukraine and draw up consolidated financial statements as required by law shall draw up and submit a consolidated report on payments to the government.

2. A consolidated report on payments to the government shall contain only information on payments to the government by extractive industry businesses.

3. A consolidated report on payments to the government shall be prepared in such scope and form as previously approved by an independent administrator and the EITI multi-stakeholder group and further approved by the Cabinet of Ministers of Ukraine.

### **Article 10. EITI Report**

1. An EITI report shall be prepared by an independent administrator, except as provided in part six of this Article.

2. The central executive authority responsible for the formation of public policy for energy sector and coal industry shall elect an independent administrator on a competitive basis, and his candidacy shall be subsequently approved by the EITI multi-stakeholder group. The procedure for holding the competition for electing the independent administrator shall be determined by the central executive authority responsible for the formation of public policy for energy sector and coal industry in coordination with the EITI multi-stakeholder group.

3. An EITI report shall be prepared in two languages (Ukrainian and English) based on analyzing and reconciling information provided by extractive industry businesses and payees and shall be approved by the EITI multi-stakeholder group.

4. An EITI report shall be prepared in accordance with the technical specifications approved by the central executive authority responsible for the formation of public policy for energy sector and coal industry and by the EITI multi-stakeholder group. The content of the technical specifications and EITI report shall be in line with the EITI requirements.

5. Within two months of the publication of an EITI report, disclosure entities may, after analyzing the EITI report, submit proposals to the central executive authority responsible for the formation of public policy for energy sector and coal industry for improving the operating efficiency of extractive industries with regard to regulatory, organizational, technological, material, and other support. Such proposals shall be considered at a meeting of the EITI multi-stakeholder group and, subject to its decision, submitted to the Cabinet of Ministers of Ukraine for their implementation.

6. The EITI multi-stakeholder group may decide not to prepare an EITI report if the electronic system for reporting submission and analysis is introduced. The EITI multi-stakeholder group shall determine the electronic system's operation procedure, which shall comply with the EITI requirements.

#### **Article 11. Information on special permits for subsurface use and on essential terms of subsurface use agreements**

1. The central executive authority implementing the public policy for geological study and rational use of subsurface resources shall publish and keep up-to-date on its official website or in the electronic system for reporting submission and analysis (if available):

information on applications for special permits for subsurface use and applications for the preparation of subsurface sites for auctions for the sale of special permits for subsurface use received from extractive industry businesses indicating, in particular, the date of receipt of such an application, its content, applicant, subsurface site coordinates, consideration phase, information on the approval or refusal of the application by competent executive authorities and municipal government bodies, and the outcome of considering the application (with justification, in the case of a refusal to issue a special permit for subsurface use); and

information on issued special permits for subsurface use specifying, in particular, the registration number and date of issue, business entity, grounds for the issue, subsurface use type, subsurface site details (field name, location, and site coordinates), and validity period and specific terms of validity of a special permit for subsurface use, together with copies of special permits for subsurface use and agreements on the terms of subsurface use and annexes thereto, including work programs and changes to them.

2. The central executive authority responsible for the formation of public policy for energy sector and coal industry shall publish information on essential terms of

subsurface use agreements between all extractive industry businesses and payees together with relevant extracts from such agreements, as well as a list of all such agreements indicating their details (name and number, parties, and date) on its official website.

3. Information on essential terms of subsurface use agreements shall include:

- agreement name, number, and date and names of the parties;
- date of entry into force and term of the agreement;
- subject matter of the agreement;
- rights and obligations of the parties in relation to subsurface use and other rights to natural resources;
- guarantees regarding certainty of legal provisions (if applicable);
- any special terms of collecting payments;
- operational obligations, in particular work programs;
- obligations relating to environmental protection measures;
- requirements for occupational health and safety of employees, and contractors and their employees; and
- social responsibilities, including provisions on participation in developing the local infrastructure and provisions on the use of works, goods, and services performed, supplied, or provided by business entities registered in a community where extractive industry activities are carried out, and requirements for conducting public hearings.

## **Article 12. Information disclosure time frames and procedure**

1. Extractive industry businesses shall disclose their (consolidated) reports on payments to the government annually by September 1 of the year following the reporting period and ensure that such reports remain publicly available during at least three years from the date of the disclosure.

2. The central executive authority responsible for the formation of public policy for energy sector and coal industry and an independent administrator shall, within 30 days from the day a (consolidated) report on payments to the government is received, give notice in writing of the receipt of such (consolidated) report on payments to the government and of its compliance with the established requirements to a relevant disclosure entity and publish the notice on its official website. Absent any observations, a (consolidated) report on payments to the government shall be deemed timely and properly submitted. If the central executive authority responsible for the formation of public policy for energy sector and coal industry and an independent

administrator make any observations, a disclosure entity shall, within 10 business days, eliminate them and prepare the final version of the (consolidated) report on payments to the government, written notice thereof with an exhaustive list of observations to be sent to it.

No measures of liability may be initiated against a disclosure entity unless it is given the opportunity to eliminate a violation within 10 business days from the day it receives the observations from the central executive authority responsible for the formation of public policy for energy sector and coal industry and an independent administrator.

3. An EITI report shall be posted on the official website of the central executive authority responsible for the formation of public policy for energy sector and coal industry annually by November 30 of the year following the reporting period, except as provided in part six of Article 10 of this this Law.

An EITI report and data posted in the electronic system for submission and analysis (if applicable) shall remain publicly available for at least 10 years from the day of posting.

4. Information on essential terms of subsurface use agreements (except for agreements on the terms of subsurface use), together with relevant extracts from such agreements, and on any amendments to those documents shall be sent by extractive industry businesses to the central executive authority responsible for the formation of public policy for energy sector and coal industry in electronic form or, where not possible, in paper form by mail with the enclosure list or entered in the electronic system for reporting submission and analysis (if available) within one month from the date they are concluded or amended.

5. Before the electronic system for reporting submission and analysis is introduced, information on essential terms of subsurface use agreements (except for agreements on the terms of subsurface use), together with relevant extracts from such agreements, and on any amendments to those documents shall be published on the official website of the central executive authority responsible for the formation of public policy for energy sector and coal industry within one month from the day it is received from extractive industry businesses and shall remain publicly available for an unlimited period.

6. Copies of special permits for subsurface use and of agreements on the terms of subsurface use and annexes thereto (including changes to work programs) and information on applications for special permits for subsurface use, applications for the preparation of subsurface sites for an auction for the sale of special permits for subsurface use, and on any changes to those documents shall be published on the official website of the central executive authority implementing the public policy for geological study and rational use of subsurface resources or entered in the electronic system for reporting submission and analysis (if available) within 10 days from the day they are received, issued, or amended and shall remain publicly available for an

unlimited period.

7. To ensure the proper collection, disclosure, and dissemination of information in extractive industries, payees shall provide, upon request of the central executive authority responsible for the formation of public policy for energy sector and coal industry and of an independent administrator complete information on payments within 15 business days from the day of the receipt of the request by sending it in electronic form or, where not possible, in paper form by mail with the enclosure list, and shall ensure that competent officials of the central executive authority responsible for the formation of public policy for energy sector and coal industry and an independent administrator have free access to such information, except as otherwise provided by law.

### **Article 13. Free access to information**

1. Information to be disclosed by disclosure entities in accordance with this Law may not be classified as commercial secret or restricted information.

## **Section III**

### **LIABILITY FOR VIOLATIONS OF EXTRACTIVE INDUSTRY TRANSPARENCY LEGISLATION**

#### **Article 14. Liability of extractive industry businesses and extractive industry parent companies for violations of extractive industry transparency legislation**

1. Extractive industry businesses and extractive industry parent companies that are disclosure entities shall be liable for the following violations:

- a failure to disclose information or meet information disclosure time frames referred to in Article 12 of this Law
- shall entail a fine of five thousand individual non-taxable minimum incomes; and
- a disclosure of a (consolidated) report on payments to the government containing incomplete information on activities of an extractive industry business referred to in Article 6 of this Law and a violation of the prescribed information disclosure procedure in extractive industries referred to in Article 12 of this Law

shall entail a fine of two thousand individual non-taxable minimum incomes.

2. Cases over violations of extractive industry transparency legislation against extractive industry businesses or extractive industry parent companies that are disclosure entities shall proceed in accordance with the provisions of this Article.

Cases over violations referred to in part one of this Article shall be considered by the central executive authority responsible for the formation of public policy for energy sector and coal industry, and a resolution shall be issued after the consideration.

The head or deputy heads of the central executive authority responsible for the formation of public policy for energy sector and coal industry may consider cases over violations and impose penalties on its behalf.

A fine may be imposed on an extractive industry business or an extractive industry parent company that is a disclosure entity within six months from the day a violation is revealed but no later than one year after it is committed.

Cases over violations referred to in part one of this Article shall be considered based on a violation report. Competent officials of the central executive authority responsible for the formation of public policy for energy sector and coal industry shall have the right to draw up reports on violations of extractive industry transparency legislation based on materials prepared by the EITI multi-stakeholder group.

The report form shall be approved by the central executive authority responsible for the formation of public policy for energy sector and coal industry.

A report, together with other materials relevant to a case, shall be submitted within five days from the date of the report to the head or a deputy head of the central executive authority responsible for the formation of public policy for energy sector and coal industry.

A violation case shall be considered within ten days from the day the violation report and other case materials are received.

A fine shall be paid within two months from the day an extractive industry business or an extractive industry parent company that is a disclosure entity receives a resolution on imposing the fine.

A copy of a bank-attested payment document certifying full payment of the fine shall be sent to the authority that has imposed the fine.

A resolution on imposing a fine shall be an enforcement document.

If a fine is not paid within the period set under this Article, the resolution on imposing the fine shall be enforced in accordance with the provisions of the Law of Ukraine On Enforcement Proceedings.

The fine amount shall be credited to the national budget.

An extractive industry business or an extractive industry parent company that is a disclosure entity may lodge an appeal in court against a resolution in a case over violations of extractive industry transparency legislation.

3. Information on a violation of extractive industry transparency legislation by an extractive industry business or by an extractive industry parent company that is a disclosure entity and on a decision on imposing a fine for such violation shall be

published within five business days from the date of the decision under the relevant section on the official website of the central executive authority responsible for the formation of public policy for energy sector and coal industry.

4. Where an extractive industry business or an extractive industry parent company that is a disclosure entity is held liable, it shall not be released thereby from the obligations established by this Law.

5. If any facts are revealed that may indicate that a violation of extractive industry transparency legislation exists, officials of the central executive authority responsible for the formation of public policy for energy sector and coal industry who have become aware of such facts shall immediately take measures to verify those facts and, should they be true, hold liable the respective extractive industry businesses or extractive industry parent companies that are disclosure entities.

**Article 15. Liability of officials of payees, the central executive authority responsible for the formation of public policy for energy sector and coal industry, and the central executive authority implementing the public policy for geological study and rational use of subsurface resources for violations of extractive industry transparency legislation**

1. For a failure to disclose information in extractive industries or meet the time frames or procedure for its disclosure, officials of payees, the central executive authority responsible for the formation of public policy for energy sector and coal industry, and the central executive authority implementing the public policy for geological study and rational use of subsurface resources shall be held liable as provided by law.

**Article 16. Appeal of decisions in cases over violations of extractive industry transparency legislation**

1. A decision on imposing a fine for violating extractive industry transparency legislation may be appealed in court as provided by law.

**Section IV**

**FINAL AND TRANSITIONAL PROVISIONS**

1. This Law shall enter into force 30 days after its publication.

2. The following legislative acts of Ukraine shall be amended:

1) Article 212<sup>3</sup> of the Code of Ukraine on Administrative Offenses (Bulletin of the Verkhovna Rada of the USSR, 1984, Annex to No. 51, Article 1122) shall be

supplemented part eleven reading as follows:

“A failure to disclose information in extractive industries or meet the time frames or procedure for its disclosure as required by the Law of Ukraine On Ensuring Transparency in Extractive Industries

shall entail a fine of twenty to sixty individual non-taxable minimum incomes to be imposed on officials”;

2) in the Law of Ukraine On Accounting and Financial Reporting in Ukraine (Bulletin of the Verkhovna Rada of Ukraine, 1999, No. 40, Article 365, as amended):

paragraph seventeen of part one of Article 1 shall be amended as follows:

“‘report on payments to the government’ means a document containing summary information on activities of extractive industry businesses or undertakings engaging in timber harvesting and detailed information on taxes, duties, and other charges paid or payable to the government as provided by law. A report on payments to the government shall be submitted by extractive industry businesses under the Law of Ukraine On Ensuring Transparency in Extractive Industries and by undertakings engaging in timber harvesting and being of public interest”;

part two and four of Article 11 shall be amended as follows:

“2. The procedure and time frames for submitting financial statements, consolidated financial statements, management report, and a report on payments to the government to government authorities, except for extractive industry businesses, shall be determined by the Cabinet of Ministers of Ukraine and, for banks, by the National Bank of Ukraine.

The procedure and time frames for submitting a report on payments to the government by extractive industry businesses shall be established in accordance with the Law of Ukraine On Ensuring Transparency in Extractive Industries”;

“4. The structure and forms of financial statements, consolidated financial statements, management report and report on payments to the government by undertakings (except for banks and extractive industry businesses), and financial statements on budget execution shall be established by the central executive authority responsible for the formation of and implementing the public policy for accounting, in coordination with the central executive authority implementing the public policy for statistics.

The structure and forms of the report on payments to the government for extractive industry businesses shall be established in accordance with the Law of Ukraine On Ensuring Transparency in Extractive Industries”;

in the text of the Law, the words ‘undertakings engaging in extraction of minerals of national significance’ in all cases, in singular or plural, shall be replaced by the words ‘extractive industry businesses’ in the corresponding case, in singular or plural.

3. Information on essential terms of subsurface use agreements (except for

agreements on the terms of subsurface use) together with relevant extracts from such agreements shall be submitted by extractive industry businesses to the central executive authority responsible for the formation of public policy for energy sector and coal industry for publication within 90 days from the date of entry into force of this Law, in line with the procedure established by this Law.

4. Copies of special permits for subsurface use and of agreements on the terms of subsurface use and annexes thereto, including changes to work programs, and information on applications for special permits for subsurface use, applications for the preparation of subsurface sites for auctions for the sale of special permits for subsurface use, and on any changes to those documents shall be published on the official website of the central executive authority implementing the public policy for geological study and rational use of subsurface resources within 90 days from the date of entry into force of this Law.

5. The first mandatory reporting period shall be 2018.

6. The Cabinet of Ministers of Ukraine shall:

- within two months from the date of entry into force of this Law,
- approve the procedure for the central executive authority responsible for the formation of public policy for energy sector and coal industry to consider cases over violations of extractive industry transparency legislation; and
- within six months from the date of entry into force of this Law,
- bring its regulations into compliance with this Law; and
- ensure that the ministries and other central executive authorities review and cancel their regulations that contravene this Law.

**Chairman of the Verkhovna Rada of Ukraine Andriy Parubiy**

