

# Validation of Ukraine

## Report on initial data collection and stakeholder consultation

## Abbreviations

ACC	American Chamber of Commerce
CSO	Civil Society Organisation
EGPS	Extractives Global Programmatic Support
EITI	Extractive Industry Transparency Initiative
EU	European Union
GDP	Gross domestic product
HRW	Human Rights Watch
IMF	International Monetary Fund
IRF	International Renaissance Foundation
MDTF	Multi Donor Trust Fund
MECI	Ministry of Energy and Coal Industry
MEDT	Ministry of Economic Development and Trade
MoJ	Ministry of Justice
MENR	Ministry of Environment and Natural Resources
MoF	Ministry of Finance
MSG	Multi-stakeholder working Group
NGO	Non-Governmental Organisation
NKREKP	National Commission for State Regulation of Energy and Public Utilities
NRGI	Natural Resource Governance Institute
SIDA	Swedish International Development Cooperation Agency
SOE	State-owned enterprise
SFS	State Fiscal Service
ToRs	Terms of Reference
UAEITI	Ukraine's national EITI secretariat
USAID	US Agency for International Development
USD	United States Dollar
VAT	Value Added Tax

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## Executive Summary

The government of Ukraine committed to implement the EITI on 30 September 2009. The Multi-Stakeholder Group (MSG) was formed on 10 October 2012. The country was accepted as an EITI Candidate on 17 October 2013 at the EITI Board's meeting in Abidjan.

On 25 October 2016, the Board agreed that Ukraine's Validation under the 2016 EITI Standard would commence on 1 July 2017. This report presents the findings and initial assessment of the International Secretariat's data gathering and stakeholder consultations. The International Secretariat has followed the Validation Procedures<sup>1</sup> and applied the Validation Guide<sup>2</sup> in assessing Ukraine's progress with the EITI Standard. While the initial assessment has not yet been reviewed by the MSG or been quality assured, the Secretariat's preliminary assessment is that several the requirements of the EITI Standard have not been fully addressed. Three requirements are assessed as unmet with inadequate progress. The recommendations and suggested corrective actions identified through this process relate in particular to production data, transportation revenues, data quality assurance and comprehensiveness of reporting by both government and industry as well as state-owned enterprises, including quasi-fiscal expenditures, financial relations with government and level of state ownership.

## Overall conclusions

Being one of the largest countries in Europe and sovereign for 26 years, Ukraine is still nurturing its democratic practice and rule of law. The country is rich in natural resources; however, internal mismanagement and external interference in the country's integrity result in the extractive sector contributing a relatively insignificant amount to the economy. Ukraine implements the EITI as a part of the country's broader anti-corruption agenda. It is the result of a five-year civil society campaign for Ukraine to join the EITI. After the Revolution of Dignity (2013-2014), the EITI became a part of the government's targeted efforts to tackle corruption and rebuild citizens' trust. It became a crucial tool for transparency of the extractive industries.

The government uses the EITI to enhance the country's image, raise its credit rating and attract quality foreign investment. EITI reporting contributes to shaping Ukraine's strategy on advancing the management of the extractive industries. Despite ongoing reforms on e-governance and open public access to the information, the EITI remains the only mechanism for disclosing the revenues from mining, oil and gas, and from transportation. The EITI process has evolved rapidly by expanding its scope to coal, manganese and titanium mining; increasing the number of reporting companies; and providing more disaggregated revenue data.

EITI implementation has complemented broader economic, financial and institutional reforms, in particular by adopting a law on "Transparency in the Extractive Industries", and by amending a law on "State Registration of Legal Entities and Individual Entrepreneurs" and a Law "Budget Code". Another strength of Ukraine's EITI implementation has been its success in using the process to address local

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<sup>1</sup> <https://eiti.org/document/eiti-validation-procedures>

<sup>2</sup> <https://eiti.org/document/eiti-validation-guide>

concerns, both through active dissemination and outreach efforts and by providing a platform for an informed public debate.

Civil society plays a central role in the EITI by being the main driver for the reforms and by keeping the government accountable for the revenues received. It sees the EITI as a greater entry-point for discussing the challenges of the extractive industries. It has also proved to be successful in identifying relevant counterparts within the government and companies.

The implementation process has been well supported by the World Bank, which has provided substantial funding since 2015. The government contributes by hosting the UA-EITI Secretariat at the Ministry of Energy and Coal Industry. Implementation of the EITI Standard has mostly been driven by a strong civil society; however, other stakeholders provide an equally significant contribution to the overall process. Requirements of the EITI Standard related to clarifying the management of off-budget revenues, the financial relations between state-owned enterprises and the government, production data, social expenditures, subnational transfers and audit practices all touch upon issues that stakeholders consider challenging. The EITI Standard provides a unique opportunity to address these issues.

EITI has led to tangible impacts through government reforms, increased engagement of the extractive companies and greater awareness by host communities of their rights. For instance, the government introduced changes to the Budget Code that enabled five percent of production royalties from oil and gas companies to be transferred to the local communities. UA EITI spearheaded efforts to facilitate dialogue on the new legislation between various stakeholders, including the Ministry of Finance, the State Fiscal Service, the State Treasury, local authorities, local communities, and extractive companies. This dialogue, which was open and publicly-accessible, discussed practical applications of the new legislation with a focus on the benefits for local communities. The EITI contributes to developing regulation and transparent reporting mechanisms for allocation and use of subnational revenues.

Due to joint efforts of MSG members the legal framework for EITI reporting was adopted. In particular, Law No.521-VIII on "Amendments to Certain Legislative Acts of Ukraine on Ensuring the Transparency in the Extractive Industries", Cabinet of Ministers Order No. 910-r on "Action Plan for the Implementation of the Extractive Industries Transparency Initiative" and Cabinet of Ministers Resolution No. 1039 on "Approval of the Procedure on Ensuring Transparency in the Extractive Industries". The MSG has also initiated development of draft Law 6299 on "Transparency in the Extractive Industries" that has already been submitted to the Parliament.

Aspects of the EITI Standard are particularly pertinent to some of Ukraine's key challenges and sources of past public controversy. Requirements of the EITI Standard related to clarifying the production data, transportation revenues, financial relations between state-owned enterprises and the government, contract transparency, social expenditures, subnational transfers and audit practices all touch upon issues that stakeholders consider sensitive. The EITI Standard provides a unique opportunity to address these issues.

## Recommendations

While the following report includes recommendations for specific improvements the MSG may wish to

consider implementing, the following is a list of strategic recommendations that could help Ukraine make greater use of the EITI.

1. To further strengthen implementation, the government is encouraged to remove any obstacles that the anti-corruption amendments might imply on the civil society operation.
2. To further strengthen implementation, the government is encouraged to institutionalise mandatory reporting for the mining industry in order to avoid reporting challenges in the future.
3. To further strengthen implementation, the MSG could consider further entrenching EITI funding in government budgeting.
4. To further strengthen the timeliness and relevance of the information, MSG and the Ukrainian government are encouraged to explore possibilities to collate and disclose information regarding the legal and fiscal framework of Ukraine online, enabling timelier and more regular updates to reflect the current context in Ukraine's extractive sector.
5. In accordance with requirement 2.2.a, the government should ensure annual disclosure of the technical and financial requirements for licenses awarded and any non-trivial deviations from the applicable legal and regulatory framework governing license awards and transfers.
6. To provide more relevant and concrete recommendations for how to improve Ukraine's licensing system, it is also recommended that the MSG considers performing additional analyses concerning the efficiency and effectiveness of the existing procedures for allocating extraction and prospecting rights in Ukraine.
7. The MSG and Government of Ukraine are encouraged to explore possibilities for providing license registry information in open data formats, such as CSV or Microsoft Excel, to improve data accessibility and to simplify data collection related to EITI reporting.
8. The MSG is recommended to explore further the government's policy on contract transparency and document the findings in future EITI Reports. The MSG and Government is encouraged to continue its efforts towards ensuring contracts are disclosed as is recommended under Requirement 2.4.
9. To strengthen implementation and prepare for full disclosure of beneficial ownership information by 2020, it is recommended that Ukraine EITI considers conducting broader outreach to the companies on the objectives of beneficial ownership transparency, as well as to hold conversations with government agencies on how to make such information accessible in open data formats. The MSG is also encouraged to ensure progress in implementing the beneficial ownership roadmap is documented in EITI Reports. The MSG and GoU are encouraged to explore opportunities for increased data accessibility; that beneficial ownership information is made available in open formats.
10. In accordance with requirement 2.6.a, the MSG should provide a comprehensive overview of state-owned enterprises, including an explanation of the prevailing rules and practices related to SOEs' retained earnings, reinvestment and third-party funding. The government should also ensure annual disclosure of any changes in government ownership in SOEs or their subsidiaries,

and provide a comprehensive account of any loans or loan guarantees extended by the state or SOEs to mining, oil, and gas companies in line with requirement 2.6.b.

11. In line with Requirement 3.2, the MSG should ensure that future reports disclose the production values for every extractives commodity produced, including crude oil, natural gas and every mineral covered by reports. To continue improving on the requirement, the MSG may wish to comment on parallel reporting systems for production volumes including regular publication and verification procedures, to ensure consistent, regular and reliable data.
12. The MSG should ensure that full government disclosure is clearly presented by separate entity and revenue stream.
13. The MSG should ensure that the IA includes a clear assessment of the comprehensiveness of the next EITI Report, that discrepancies are explained and investigated where necessary.
14. The MSG should ensure that the next report disaggregates the transportation revenues by pipeline/route and by paying company.
15. As per Requirement 4.5, the MSG should engage relevant government entities and SOEs with the view to ensure that the reporting process comprehensively addresses the role of state-owned enterprises (SOEs), including material payments to SOEs from oil, gas and mining companies, and transfers between SOEs and other government agencies.
16. The MSG is recommended to engage relevant government agencies to ensure an overview of state ownership is accessible and regularly updated. Related to such an overview should also contain the general governing principles of managing SOEs', in addition to specific information for SOEs in the extractive sector.
17. To strengthen implementation, the MSG may wish to add a clear explanation on the government entity, that collect all tax and non-tax revenues in Ukraine.
18. The MSG should insure that the next EITI includes an overview of progress on addressing the recommendations from the previous EITI reports.
19. The MSG should ensure that the Independent Administrator provides an assessment of comprehensiveness and reliability of the (financial) data presented, including an informative summary of the work performed by the Independent Administrator and the limitations of the assessment provided.
20. The Independent Administrator's inception report should document the options considered and the rationale for the assurances to be provided.
21. The MSG should ensure that the next EITI Report includes an assessment of omissions and if any omissions had material impact on the comprehensiveness and reliability of the report.
22. The next EITI Report should include the IA's opinion regarding that reconciliation, including discrepancies.
23. The MSG should ensure that the confidentiality provisions are clearly agreed and explained.










24. To strengthen implementation, the MSG may wish to consider providing detailed explanation of the formula used for allocation of subventions in the EITI Report.
25. To strengthen implementation, the MSG may wish to further investigate the nature of discrepancies between the budgeted amounts and executed transfers.
26. The MSG is encouraged to publicly clarify the existence of the mandatory social payments.
27. In line with Requirement 6.2, the MSG should clarify a definition of materiality with regards to quasi-fiscal expenditures by SOEs, including SOE subsidiaries and joint ventures. The MSG should ensure disclosure of quasi-fiscal expenditures are according to requirement 6.2. This includes the nature of the subsidy scheme for household utility-payments, and the role of state-owned enterprises. It also includes the financial relationship between the SOE and its subsidiaries, including joint ventures, especially pertaining to coverage of losses.
28. To further ensure disclosure is comprehensive, the MSG may wish to define which expenditures are of a quasi-fiscal nature using national laws and regulations, e.g. as defined by order no. 692 of the Cabinet of Ministers of Ukraine.
29. The MSG should clarify the availability of, and estimate, informal sector activity. This includes but is not necessarily limited to artisanal and small-scale mining, as per Requirement 6.3.
30. To further strengthen implementation, the MSG may wish to consider undertaking an impact assessment, in order to determine the extent to which the EITI has contributed to improving public financial management and governance of the mining, oil and gas sectors.
31. To further strengthen implementation, the MSG in consultation with the government should follow-up to act on lessons learned, to identify, investigate and address the causes of discrepancies.

Figure 1: Initial assessment card

EITI Requirements		LEVEL OF PROGRESS				
		No progress	Inadequate	Meaningful	Satisfactory	Beyond
Categories	Requirements					
MSG oversight	Government engagement (#1.1)					
	Industry engagement (#1.2)					
	Civil society engagement (#1.3)					
	MSG governance (#1.4)					
	Work plan (#1.5)					
Licenses and contracts	Legal framework (#2.1)					
	License allocations (#2.2)					
	License register (#2.3)					
	Policy on contract disclosure (#2.4)					
	Beneficial ownership (#2.5)					
	State participation (#2.6)					
Monitoring production	Exploration data (#3.1)					
	Production data (#3.2)					
	Export data (#3.3)					
Revenue collection	Comprehensiveness (#4.1)					
	In-kind revenues (#4.2)					
	Barter agreements (#4.3)					
	Transportation revenues (#4.4)					
	SOE transactions (#4.5)					
	Direct subnational payments (#4.6)					
	Disaggregation (#4.7)					
	Data timeliness (#4.8)					
	Data quality (#4.9)					
Revenue allocation	Distribution of revenues (#5.1)					
	Subnational transfers (#5.2)					
	Revenue management and expenditures (#5.3)					
Socio-economic contribution	Mandatory social expenditures (#6.1)					
	SOE quasi-fiscal expenditures (#6.2)					
	Economic contribution (#6.3)					
Outcomes and impact	Public debate (#7.1)					
	Data accessibility (#7.2)					
	Follow up on recommendations (#7.3)					
	Outcomes and impact of implementation (#7.4)					

*Legend to the assessment card*

	<b>No progress.</b> All or nearly all aspects of the requirement remain outstanding and the broader objective of the requirement is not fulfilled.
	<b>Inadequate progress.</b> Significant aspects of the requirement have not been implemented and the broader objective of the requirement is far from fulfilled.
	<b>Meaningful progress.</b> Significant aspects of the requirement have been implemented and the broader objective of the requirement is being fulfilled.
	<b>Satisfactory progress.</b> All aspects of the requirement have been implemented and the broader objective of the requirement has been fulfilled.
	<b>Beyond.</b> The country has gone beyond the requirement.
	This requirement is only encouraged or recommended and should not be taken into account in assessing compliance.
	The MSG has demonstrated that this requirement is not applicable in the country.

## Introduction

### Brief recap of the sign-up phase

On 30 September 2009, Prime Minister Yulia Tymoshenko issued Cabinet of Ministers' Resolution № 1098 on joining the EITI (Cabinet of Ministers, 2009). The Resolution was published in the Official Bulletin of Ukraine on 23 October 2009, and in the Uryadovy Courier on 28 October 2009. The Resolution included a declaration by the Cabinet of Ministers of Ukraine announcing the government's intent to implement the EITI. On 12 March 2012, Prime Minister Mykola Azarov appointed the Minister of Energy and Coal Industry (MECI) to be in charge of EITI implementation by issuing Resolution № 230 (Cabinet of Ministers, 2012). EITI implementation was also included in Ukraine's Open Government Partnership action plan approved by the government's Resolution № 514-p on 18 July 2012. Following submissions from each of the constituencies, the MSG was formally established on 10 October 2012 through Ministerial Decree №785 (Decree №785, 2012). On 27 February 2017, Natalia Boyko was appointed as a Deputy Minister on European integration and consequently chaired the MSG (Decree №112-k, 2017)<sup>3</sup>.

### Objectives for implementation and overall progress in implementing the work plan

According to the 2017 work plan Ukraine's three main objectives for the EITI implementation that linked to the national priorities and EITI Principles are (1) Improving transparency and reducing corruption in the extractive industries; (2) Strengthening partnership between government, local self-governments, companies and local communities to decrease tensions; and (3) Going beyond EITI framework: harmonization with the Energy Sector reforms.

Overall, implementation of the current 2017 work plan activities is on track.

### History of EITI Reporting

Ukraine has produced two EITI Reports covering the fiscal years 2013-2015. The Independent Administrator Ernst and Young was contracted twice, producing in total two EITI reports covering fiscal years 2013-2015. The deadline for publishing the 2016 EITI Report is by the end of 2018, and the report is on track to be published in Q1 2018.

### Summary of engagement by government, civil society and industry

Ministerial Order № 785, signed on 10 October 2012, established Ukraine's multi-stakeholder group (MSG). In 2017 the MSG enlarged its composition to 24 members, adding two more seats to each constituency (UA-EITI, 2016d). The MSG membership does not envisage alternates. The eight government members include Deputy Minister of Energy and Coal Industry Natalya Boyko, the MSG Chair,

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<sup>3</sup> Decree №112-k is accessible in Ukrainian on the website of the Ministry of Energy and Coal Industry, <http://mpe.kmu.gov.ua/minugol/doccatalog/document?id=245187220>

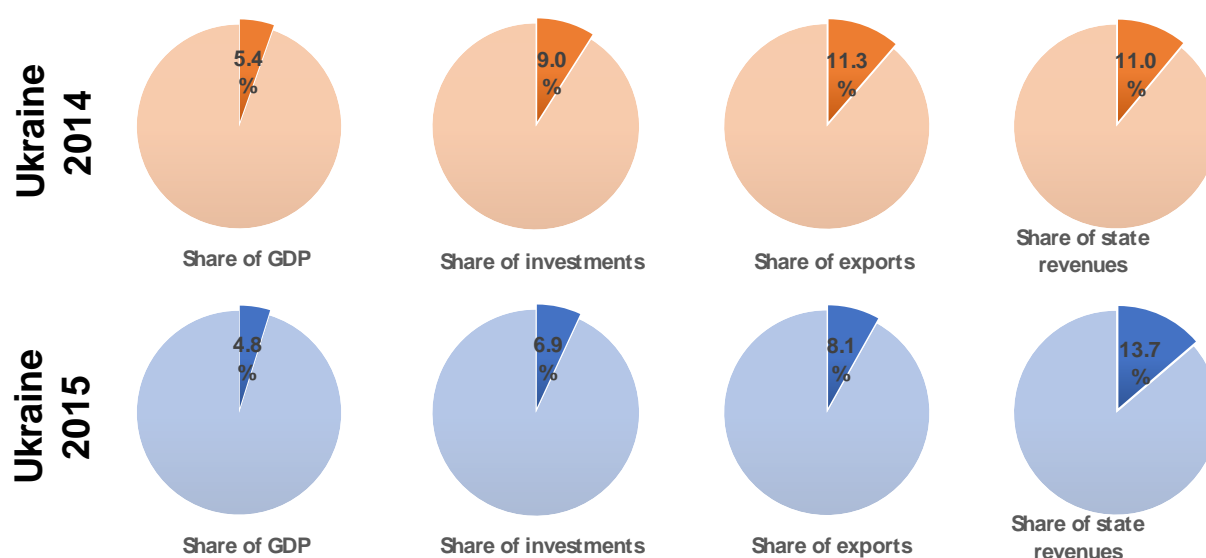
and representatives from the National Commission for State Regulation of Energy and Public Utilities (NKREKP); State Service of Geology and Mineral Resources; Ministry of Economic Development and Trade (MED); Ministry of Finance (MoF); Ministry of Energy and Coal Industry (MECI); Ministry of Ecology and Natural Resources (MENR); and State Fiscal Service (SFS). Industry's eight MSG representatives include Kadogan Ukraine, PJSC Ukrgazvydobuvannya, DTEK Energo, Ukrtransgaz, DTEK Naftogaz, ENI Ukraine, Arcelor Mittal, and Naftogaz Ukraina. Civil society also has eight MSG seats, that include representatives from XXI Strategy; Research Centre for Issues in Eastern Ukraine; Public Organization 'Poltava Branch of the Public Service of Ukraine'; Dixi Group think tank; IRF; NGO 'Bureau of Development, Innovation and Technology'; NGO 'Nova Energia'; and Analytical Centre for Regional Cooperation.

Records of MSG meeting attendance shows that a quorum was reached at all MSG meetings and attendance has been consistent for all three constituencies. Details on MSG members' meeting attendance are provided in Annex B.

## Key features of the extractive industry

The extractive sector is a key priority for the Ukrainian government. Although extractives do not account for a particularly large share of economic activity in Ukraine, it is an important source of the Ukrainian government's income, and foreign currency reserves through exports.

*Figure 2: Extractive industry contribution to economy*



*Source: Authors' estimates, based on 2014-2015 Ukraine EITI Report data*

The main sub-sector in Ukraine is the petroleum sector. Government revenues in 2015 from petroleum companies, which were reconciled in the EITI Report, accounted for 77% of total reconciled revenues. Coal accounted for roughly 11% while the metal ores (iron, manganese and titanium) accounted for 12%.

However, in terms of exports and foreign currency earnings, the importance of the sub-sectors shift. Crude oil and coal accounted for less than one percent of total export values. Metal ores on the other

hand account for 97% of Ukraine's extractive sector exports – almost 6% of total exports of Ukraine – proving the importance for these sub-sectors to be included in the scope of reporting. Domestically produced gas was not exported during the period.

The coal industry contributes significantly to the government's budget. But the sector is also heavily reliant on subsidies and government programs supporting the companies. This is partly due to the sector employing more than 122 000 people, 56 000 of which are employed by state-owned enterprises, making the sector of high importance for Ukraine's population. Also, there are significant challenges for the sub-sector as a majority of all mines, 57%, are located in the Donetsk and Luhansk regions – the regions which are most central in the on-going conflict between Russia and Ukraine.

Another important sub-sector is the oil and gas transportation system. In 2015 the oil transportation network (operated by the SOE Ukrtransnafta PJSC) transported 15.2 million tons, or 111.4 million barrels of oil. The revenues generated from these activities amount to UAH 3.33 billion or USD 152.4 million. However, the most valuable transportation system is the gas transit network consisting of almost 39 000 km of pipeline. In 2015 it delivered 67.1 billion Sm<sup>3</sup> of gas to European countries. This makes the sector an even more important source of economic activity with a value created by its SOE Ukratransgaz PJSC of almost UAH 25.2 billion (USD 1.15 billion).

However, domestically produced gas was not exported during the period. And as noted previously, the coal sector represents a significant challenge in Ukraine. Therefore, one of the main objectives of the Government of Ukraine (GoU) is therefore to reach energy independence by increasing domestic output and production of electricity, oil, and natural gas and by diversifying its energy supplies. Petroleum production in Ukraine consists of 89% natural gas, 7.9% oil, and 3.1% of gas condensates. The majority of this sub-sector's activities is maintained within three regions; the Dnipro-Donetsk basin, the Carpathian region in western Ukraine, and the Black Sea and Crimea region in the south. The Dnipro-Donetsk basin is a major oil and gas producing region accounting for 90 percent of all current Ukrainian production<sup>4</sup>. The leading position in gas production in Ukraine belongs to the state-owned companies, namely: PJSC Ukrghazvydobuvannya, PJSC Ukrnafta – accounting for 73 percent and seven percent of production respectfully.

The overall economic context of Ukraine has been volatile, following the 2014 Revolution of Dignity. According to the most recent Article IV Consultation performed by the International Monetary Fund (IMF) (IMF, 2017), the economy is now stabilising after a period of high inflation and economic downturn. The consultation also assessed Ukraine's progress towards conditions accompanying IMF's Extended Fund Facility towards Ukraine, of USD 17.5 billion (IMF, 2017). The IMF also mirror several challenges in Ukraine which relate to the extractive sector. One of these is the existence and participation in state-owned enterprises (SOEs). Although government financing of their main SOE Naftogaz has dropped significantly (to almost zero), there are significant delays in unbundling and privatising SOEs. Another challenge is reducing gas imports. Being a major gas-producing nation herself, Ukraine have started to roll back excessively low gas/heating prices which are beginning to stabilise domestic consumption. The IMF report highlights that prices are now reaching full cost-recovery-levels, and that the next step is to reform a large

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<sup>4</sup> <https://www.export.gov/article?id=Ukraine-Oil-and-Gas>

subsidy-scheme targeting Ukrainian households, as well as accounting for environmental costs in gas pricing. Lastly, the report identifies non-performing loans of companies and SOEs as a major challenge in Ukraine, which creates significant problems for the financial institutions of the country.

In terms of governance, the Resource Governance Index by the Natural Resource Governance Institute (NRGI), Ukraine<sup>5</sup> scores a weak 49 out of 100 points and ranks 44th among 89 countries that were assessed (NRGI, 2017). The index highlights some areas that are particularly challenging, listing contract transparency, tax authority and fiscal rules, and transparency regarding SOEs non-commercial activities. The licensing regime and financial reporting rules for SOEs are also scoring in the mid-range of the index.

Several of these areas are also reflected in country-profiles by the World Bank's Ease of Doing Business index (World Bank, 2017), the World Economic Forum's Competitiveness Report (WEF, 2017) and the Economist's Intelligence Unit (EIU, 2017) as areas of significant concerns. However, the Ease of Doing Business cites on-going improvements enforcement of contracts and minority investor protection (World Bank, 2017). Still, the issue of bureaucracy-levels in Ukraine are listed in all indexes as major challenges for Ukraine's international competitiveness, alongside lack of public disclosures of information.

## Adapted Implementation

In April 2014, the Government of Ukraine has declared both the Donetsk and Luhansk regions as a zone of anti-terrorist operation after annexation of the Crimean Peninsula, leading to self-proclamation of people's republics on these territories. Therefore, the multi-stakeholder group (MSG) applied for adapted implementation to the EITI Board with respect to the coverage of reporting on extractive activities in the Donetsk and Luhansk regions and annexed Crimea for the 2014 and 2015 fiscal years. In the adapted implementation request, the multi-stakeholder group requests that the possible lack of comprehensive information on the Donetsk and Luhansk regions and Crimean Peninsula would not be held against Ukraine in Validation. The request argues that the government and the multi-stakeholder group are not able to oblige the self-proclaimed authorities at territories of Donetsk and Luhansk regions and Crimean Peninsula or the companies operating there to submit information for EITI Reports. The request states that the government and multi-stakeholder group will continue their efforts to obtain the data from the conflict zone and include them to the EITI Report.

In October 2016, the EITI Board approved the MSG's request pertaining to the 2014-15 EITI Report, asking the Government of Ukraine to *(1) continue to engage with companies and government agencies with activities in these regions; (2) ensure that the EITI Report include links to other publicly available sources of information where information from the entities in the region was not provided; and (3) ensure full unilateral disclosure of any revenues received by the Government of Ukraine from companies and local government agencies in these regions.*

**With regards to continues engagement with companies in Donetsk and Luhansk regions**, the Independent Administrator, Ernst and Young, send out reporting requests to 97 extractive companies under the EITI scope, including those companies operating in the conflict regions. One of the biggest coal

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<sup>5</sup> <http://resourcegovernanceindex.org/country-profiles/UKR/oil-gas>

producers, the DTEK Group, provided full revenue data on its operations in Donetsk and Luhansk regions in 2014-2015, enabling to cover 93.9% of the government revenues from the coal sub-sector in 2015.

**With regards to including links to other publicly available sources of information**, the EITI Report refers to the reports and statements of the Ministry of Energy and Coal Industry<sup>6</sup>, and to the annual reporting, including financial statements, of the DTEK Group<sup>7</sup>.

**With regards to ensuring full unilateral disclosure of any revenues received by the Government of Ukraine from companies and local government agencies in these regions**, the 2014-15 EITI show that the sole collector of tax and non-tax revenues in Ukraine, the State Fiscal Service, has provided full unilateral disclosure of total income, including from non-reporting companies, for each material revenue stream. In addition to this, table 5.12-2 of the 2014-15 EITI Report provides data on tax revenues from extractive industries disaggregated by regions, including Donetsk and Luhansk<sup>8</sup>. In terms of gaps and omissions, the EITI Report could not provide specific comments towards assessing the comprehensiveness of government ownership due to the lack of information regarding the regions which are affected by the EITI Board-approved Adapted implementation request.

## Explanation of the Validation process

Validation is an essential feature of the EITI implementation process. It is intended to provide all stakeholders with an impartial assessment of whether EITI implementation in a country is consistent with the provisions of the EITI Standard. It also addresses the impact of the EITI, the implementation of activities encouraged by the EITI Standard, lessons learnt in EITI implementation, as well as any concerns stakeholders have expressed and recommendations for future implementation of the EITI.

The Validation process is outlined in chapter 4 of the EITI Standard<sup>9</sup>. It has four phases:

1. Preparation for Validation by the multi-stakeholder group (MSG)
2. Initial data collection and stakeholder consultation undertaken by the EITI International Secretariat.
3. Independent quality assurance by an independent Validator who reports directly the EITI Board
4. Board review.

The [Validation Guide](#) provides detailed guidance on assessing EITI Requirements, and more detailed [Validation procedures](#), including a standardised procedure for data collection and stakeholder consultation by the EITI International Secretariat and standardised terms of reference for the Validator.

The Validation Guide includes a provision that: “Where the MSG wishes that validation pays particular attention to assessing certain objectives or activities in accordance with the MSG work plan, these should

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<sup>6</sup> [http://mpe.kmu.gov.ua/minugol/control/publish/article?art\\_id=244964062](http://mpe.kmu.gov.ua/minugol/control/publish/article?art_id=244964062)

<sup>7</sup> [http://dtek.com/investors\\_and\\_partners/reports/](http://dtek.com/investors_and_partners/reports/)

<sup>8</sup> 2014-15 EITI Report, p. 114-115 <https://eiti.org/document/20142015-ukraine-eiti-report>

<sup>9</sup> See also <https://eiti.org/validation>.



be outlined upon the request of the MSG”.

In accordance with the Validation procedures, the International Secretariat’s work on the initial data collection and stakeholder consultation was conducted in three phases:

### 1. Desk Review

Prior to visiting the country, the Secretariat conducted a detailed desk review of the available documentation relating to the country’s compliance with the EITI Standard, including but not limited to:

- The EITI work plan and communication strategy;
- The multi-stakeholder group’s Terms of Reference, and minutes from multi-stakeholder group meetings;
- EITI Reports, and supplementary information such as summary reports, additional comments from IA and scoping studies;
- Communication materials (news items, press releases, news clippings, etc.);
- Annual progress reports; and
- Any other information of relevance to Validation.

In accordance with the Validation procedures, the Secretariat has not taken into account actions undertaken after the commencement of Validation.

### 2. Country visit

A country visit took place on **18-22 September 2017**. All meetings took place in Kyiv, Ukraine. The secretariat met with the multi-stakeholder group and its members, the Independent Administrator and other key stakeholders, including stakeholder groups that are represented on, but not directly participating in, the multi-stakeholder group. In addition to meeting with the MSG as a group, the Secretariat met with its constituent parts (government, companies and civil society) either individually or in constituency groups, with appropriate protocols to ensure that stakeholders are able to freely express their views and that requests for confidentiality are respected. The list of stakeholders consulted is outlined in Annex D.

### 3. Reporting on progress against requirements

This report provides the International Secretariat initial assessment of progress against requirements in accordance with the Validation Guide. It does not include an overall assessment of compliance.

The International Secretariat’s team comprised: **Jonas Moberg, Sam Bartlett, Christoffer Claussen, Alex Gordy and Oliana Valigura.**

## Part I – MSG Oversight

### 1. Oversight of the EITI process

#### 1.1 Overview

This section relates to stakeholder engagement and the environment for implementation of EITI in country, the governance and functioning of the multi-stakeholder group (MSG), and the EITI work plan.

#### 1.2 Assessment

### Government engagement in the EITI process (#1.1)

#### Documentation of progress

##### Public statement:

The government of Ukraine has made several unequivocal statements of its intention to implement the EITI. On 30 September 2009, Prime Minister Yulia Tymoshenko issued Cabinet of Ministers' Resolution N 1098 on joining the EITI (Cabinet of Ministers, 2009). On 12 March 2012, Prime Minister Mykola Azarov appointed the Minister of Energy and Coal Industry (MECI) to be in charge of EITI implementation by issuing Resolution № 230 (Cabinet of Ministers, 2012). EITI implementation was also included in Ukraine's Open Government Partnership action plan approved by the government's Resolution № 514-p on 18 July 2012. Ministerial Order № 785, signed on 10 October 2012, established Ukraine's multi-stakeholder group (MSG).

The government has continually expressed its commitment through public statements, interviews and events. Prime Minister Volodymyr Groysman in his speech expressed support for mandatory disclosure of extractive revenues under the EITI Standard (UAEITI, 2016a). Members of Parliament Oleksandr Dombrovsky, Head of the Committee of the fuel and energy complex, nuclear policy and nuclear safety, and EITI Board member Olga Bielkova actively advocate for EITI reforms in the country (Dombrovsky, 2016), (Bielkova, 2017). The government's strong commitment was repeated at EITI conferences, press conferences and related events, through public statements and interviews. For instance, at the EITI national conference in February 2017.

Ukraine has participated in OGP since 2011. Implementation of the EITI remains one of the main priorities related to Ukraine's agenda in OGP. The EITI was included in the national Action Plan for 2012-2013 (OGP Ukraine, 2012), 2014-2015 (OGP Ukraine, 2014) and 2016-2018 (OGP Ukraine, 2016).

##### Senior lead:

On 12 March 2012, the Cabinet of Ministers of Ukraine adopted Resolution №230, which appointed the Minister of Energy and Coal Industry as the senior government representative to oversee the EITI implementation in its early phases. At the time, this position was held by Yuriy Boiko. Subsequent to this appointment, Minister Yuriy Boiko nominated Volodymyr Makukha, then Deputy Minister of Energy and

Coal Industry, to act as the Chair of the MSG (Decree №785, 2012). Deputy Minister Volodymyr Makukha was replaced by Andriy Bondarenko in July 2013. The latter was replaced by Igor Didenko who was appointed as a Deputy Minister in 2014. On 27 February 2017 Natalia Boyko was appointed as a Deputy Minister on European integration and consequently became the MSG Chair (Decree №112-k, 2017)<sup>10</sup>.

Following submissions from each of the constituencies, the MSG was formally established on 10 October 2012 through Ministerial Decree №785 (Decree №785, 2012). The MSG decided to enlarge its composition to eight members per each constituency and to renew it accordingly (UA-EITI, 2016d).

#### Active engagement:

The government's engagement in the design, implementation, monitoring and evaluation of the EITI process has been consistently strong throughout Ukraine's implementation of the EITI. The government has eight senior members on the MSG. Attendance records and minutes of MSG meetings indicate that government representatives of the MECI, SFS, MoF, SGS, MEDT, usually participate in the meetings. A representative of MENR did not attend any of the meeting since Q3 2016. Government representatives take part in the EITI conferences<sup>11</sup>, workshops, public debates, outreach and dissemination activities. Igor Nasalyk and other senior government officials are open to public meetings<sup>12</sup> and discussions<sup>13</sup> with civil society and industry representatives.

Government representatives have been actively engaged in core MSG activities such as drafting and commenting on EITI work plans and annual activity reports, EITI reporting templates and EITI Reports. They are part of the ad-hoc working groups. An analysis of MSG meeting minutes confirms that several of these activities have been initiated by government representatives on the MSG. In particular, SFS representative suggested enlarging the scope for 2014-25 EITI Report and added manganese and titanium ores. The Minister of Energy initiated to cover 2015 fiscal year (aside of 2014) in the second EITI report. At the discussion of scope for the 2016 EITI Report, a government representative suggested considering clay.

The national secretariat is hosted by MECI and comprises three staff: Dina Narezheva, Head of Secretariat; Olesia Nekhoroshko, Finance Manager; and Lesya Khomyak, PR coordinator. The secretariat is fully funded by the World Bank, however, the MECI submitted proposal to include the EITI implementation into the 2018 State Budget. In addition to this, MECI created a position for an EITI officer within the Ministry to support the national secretariat. It is expected to have a new government-funded staff member in early 2018. MECI provides venue for the MSG meetings. Also sufficient technical and financial support to the EITI process is being provided by GIZ and IRF. IRF mostly funds travel costs and civil society related activities, whereas GIZ contracted a permanent communication specialist Svitlana Mizina that supports implementation of the communication strategy and coordinates outreach and dissemination activities in the regions.

<sup>10</sup> Decree №112-k is accessible in Ukrainian on the website of the Ministry of Energy and Coal Industry,

<http://mpe.kmu.gov.ua/minugol/doccatalog/document?id=245187220>

<sup>11</sup> <http://eiti.org.ua/2017/02/konferentsiya-eiti-v-ukrajini-yak-efektyvno-upravlyaty-resursamy-den-pershvi/>

<sup>12</sup> <http://eiti.org.ua/2016/06/ministr-proponuje-schob-nastupnyi-zvit-ipvh-vklyuchav-dani-za-dva-roky/>

<sup>13</sup> <http://dixigroup.org/eng/news/v-minenergo-obgovorili-formuvannya-y-oprilyudnennya-naboriv-vidkritikh-danikh/>

## Stakeholder views

### Statements of support:

A representative of an international organisation praised the synergy between EITI and OGP and how they reinforced each other. Representatives of the donor community welcomed government's progress in implementing the EITI and recognised that the quality and scope of reporting increased. A few civil society MSG members commented that the MSG strengthened inter-governmental collaboration and increased debate between the line ministries. Most of the civil society representative agreed that the government's commitment and engagement remained strong, however a few of them said that the government's support on a higher political level could have been greater. Representatives of the government and the national secretariat said that MECI submitted a proposal to the Ministry of Finance for the government's funding of EITI reporting in 2018. It was noted that the government was positive about the funding and it was most likely to receive it. A representative of development partners commented that the EITI is a part of the government's anti-corruption agenda and thus was included into three OGP national actions plans. Cabinet of Ministers discussed the EITI implementation with great interest at the OGP/NRGI round table in February 2017.

### Senior lead:

Most of the civil society representatives said that the government remains in a constant change and that four line ministers have changed since 2013. However, the commitment and interest of the government remained unchanged. The Deputy Minister of Energy and Coal Industry, MSG Chair was dedicated, engaged and supportive. Government and industry stakeholders did not express any particular views on the government's senior lead for EITI. A representative of UA-EITI said that the MSG Chair, Deputy Minister of Energy, Natalya Boyko has been very supportive of the EITI since her appointment in early 2017. Ms Boyko not only diligently attended the MSG meetings, but also took part in the MSG exchange visits and EITI related events.

### Engagement:

A representative of an international organisation noted that the government and members of the Parliament were interested and involved in the EITI process. Interaction between civil society, the government and members of Parliament was defined as robust, frank and dynamic. Most of the civil society representatives interviewed agreed that the government's engagement is good enough for the meaningful EITI process, but more could have been done. It was noted that stable relationships are formed with key ministries, for instance MoF and SFS, however, the process of political transition results in frequent rotation of the governmental staff. Another civil society representative commented that the Ministry of Energy supports the EITI, however the interest is limited at times. It was noted that covering two fiscal years (2014 and 2015) in the second EITI Report was requested by the Minister as he was interested in a timely data. Most of the extractive companies' representatives said that EITI strengthened their dialogue with the government. No other particular views in regard to the government engagement were shared from the companies' perspective. All stakeholders, including the government, agreed that there were a few weak sides related to the state participation in the extractive industries. In particular, the stakeholders commented on reforming the State Geology Service – the main entity in charge of licensing; and on privatising SOE Naftogaz of Ukraine.

## Initial assessment

The International Secretariat's initial assessment is that **Ukraine** has made **satisfactory** progress in

meeting this requirement. Despite delays with appointing the MSG Chair, linked to the political transition in 2014-2015, there are regular, public statements of support from the government, a senior individual has been appointed to lead on the implementation of the EITI and senior government officials are represented on the MSG. Evidence including MSG meeting minutes show that the government is actively and effectively engaged in the design, implementation, monitoring and evaluation of the EITI. Current representation on the MSG shows that the government is taking the process seriously and government stakeholders were effectively engaged in all aspects of implementation. The local governments officials were fully and actively engaged in numerous outreach and dissemination activities in the regions and this has created a sound ground for the public debate. MECI hosts the UA-EITI secretariat and is currently considering securing sustainable government's funding to the EITI process. To further strengthen implementation, the MSG could consider further entrenching EITI funding in government budgeting.

## Industry engagement in the EITI process (#1.2)

### Documentation of progress

#### Active engagement:

Ukraine's EITI reporting covers the mining, oil and gas sectors as well as gas transit. The oil and gas industry consists of the following main players: ArcelorMittal S.A., Cadogan Ukraine LLC, DTEK Energo, DTEK Naftogaz, ENI S.p.A. and three state-owned enterprises NJSC Naftogaz of Ukraine, PJSC Ukrghazvydobuvannya, and PJSC Ukrtransgaz. The oil and gas industry is mainly operated by the state-owned company JSC Naftogaz of Ukraine. The mining sub-sectors in the scope of EITI reporting comprise coal, iron ore, manganese and titanium ores. According to the 2016 Scoping Study, the total number of extractives companies operating in 2014-2015 is 670 (UA-EITI, 2016e). The number of material companies in the scope of EITI reporting decreased from 120 in 2013 to 97 in 2015, although the number of actually reporting companies rose from 41 in 2013 to 58 in 2015. The main challenge with the company reporting is related to the mining industry which is not required to report. In addition to this, most of the coal companies that are in its majority operating in the eastern Ukraine we prevented from reporting due the military conflict in Lugansk and Donetsk regions.

Industry's role in EITI implementation is defined in the MSG's ToRs, including the constituency's responsibility to engage all material extractives companies in accurate disclosure of all payments according to the EITI reporting templates as well as to communicate with other industry stakeholders about EITI developments (UA-EITI, 2016b). Extractives companies have been supportive of EITI implementation from the earliest stages, including through statements<sup>14</sup>, participation in conferences<sup>15</sup>/public discussions<sup>16</sup>/workshops<sup>17</sup>, publications, blogs<sup>18</sup>, etc. In particular, the ACC annually produces a White Paper on Reforms in the Oil and Gas Sector (American Chamber of Commerce in Ukraine, 2014-2015), (American Chamber of Commerce in Ukraine, 2016). Also, Shell Ukraine LLC

<sup>14</sup> <http://www.chamber.ua/Events/Event/1452>

<sup>15</sup> <http://agpu.org.ua/news/ukrainianenergyforum-2017-adama%20smita-AGPU.htm>

<sup>16</sup> <http://agpu.org.ua/news/poltava-partnerstvo-gazovidobuvnikiv-i-miscevih-gromad.htm>

<sup>17</sup> [http://agpu.org.ua/association\\_members/section-teaching\\_us/seminar-eiti-dlya-fahivciv-naftogazovidobuvno-galuzi.htm](http://agpu.org.ua/association_members/section-teaching_us/seminar-eiti-dlya-fahivciv-naftogazovidobuvno-galuzi.htm)

<sup>18</sup> <http://agpu.org.ua/news/prozoriv-rinok-EITI-standart.htm>

supported translation of the 2013 EITI Standard into Ukrainian. The Association of Gas Producers of Ukraine published the EITI Report<sup>19</sup> on its website and uses the contextual information on the extractive industries legislation<sup>20</sup> for inverters. Executive Director of the Association of Gas Producers of Ukraine Roman Opimakh said “We are deeply convinced that the Association's participation in the Extractive Industries Transparency Initiative (EITI) is needed to build a transparent ‘supply-to-consumer’ chain, to improve the efficiency of operations, and to debunk myths and prejudices towards the extractive industries” (Association of Gas Producers of Ukraine, 2017).

The extractive companies were actively engaged in the dissemination and outreach events in the regions, contributing in a full and meaningful way to the informed public debate. DTEK Oil and Gas<sup>21</sup> and Ukgazvydobuvannya<sup>22</sup> actively promote the EITI in social media.

Attendance records and minutes of MSG meetings indicate that a majority of industry representatives from both private and SOEs consistently participate in meetings of the MSG and the ad-hoc working groups (see Annex B).

#### *Enabling environment:*

On 16 June 2015, the Parliament adopted a Law on “Introduction of Amendments to Certain Legislative Acts of Ukraine on Ensuring Transparency in the Extractive Industries” that provided basis for the extractive companies to report in accordance with the EITI requirements (Law on Introduction of Amendments to Certain Legislative Acts of Ukraine on Ensuring Transparency in Extractive Industries, 2016)<sup>23</sup>. Following the adoption of the Law, the Cabinet of Ministers issued Regulation №1039 to define the mechanism for collection and dissemination of information, required by the EITI Standard (Regulation №1039 on “Ensuring Transparency in the Extractive Industries”, 2016). Even though, the government provided enabling environment for oil and gas companies to report under the EITI Standard, the mining industry remains not covered by existing law. In order to address recommendations from the EITI reporting and stakeholders’ consultation, the Draft Law on Law on Transparency of Information in the Extractive Industries was submitted to Parliament in June 2017.

According to the Candidature application, the invitation to participate in the MSG was sent to all private and state-owned companies, including the American Chamber of Commerce and European Business Association. The American Chamber of Commerce (ACC) and the Association of Gas Producers of Ukraine represent the private extractive companies on the MSG.

The MSG industry constituency supports the draft Law on Transparency in the Extractive Industries and initiated an open statement<sup>24</sup> to the President and the Prime-Minister of Ukraine.

<sup>19</sup> <http://agpu.org.ua/analytics/section-infographics/eiti-nacionalniy-zvit-ukrani-2014-2015-.htm>

<sup>20</sup> [http://agpu.org.ua/en/association\\_members/section-strategy\\_documents/](http://agpu.org.ua/en/association_members/section-strategy_documents/)

<sup>21</sup> <https://www.facebook.com/dtekoilandgas/>

<sup>22</sup>

[https://www.facebook.com/Ukgazvydobuvannya/?hc\\_ref=ARTCepw9Yb9gPXo74Vqu5axOfdoNRbyxSk1M3U82\\_9YHHR6dUSwFYxNxvrKQzBhGSwM](https://www.facebook.com/Ukgazvydobuvannya/?hc_ref=ARTCepw9Yb9gPXo74Vqu5axOfdoNRbyxSk1M3U82_9YHHR6dUSwFYxNxvrKQzBhGSwM)

<sup>23</sup> The Law in Ukrainian is available on the Parliament’s official website, <http://zakon2.rada.gov.ua/laws/show/521-19>

<sup>24</sup> An open statement from the Association of Gas Producers of Ukraine is available on [its Facebook page](#).

## Stakeholder views

Civil society representatives said that the company constituency was active and engaged in the EITI process. Some companies like ENI and Ukrgezvydobuvannya were publicly supporting the EITI and participated in the regional outreach and dissemination events. Shell, for instance, provided support for translating the 2013 EITI Standard into Ukrainian. Most of the stakeholders agreed that transparency of SOEs remains a challenge. A few government representatives commented on the plans of privatising JSC Naftogaz of Ukraine and restructuring some of its subsidiaries. Representatives of industry said that found the EITI useful. In particular, a representative of ENI referred to a case where a discrepancy in reporting led to identifying inaccuracy in the government data that was corrected eventually.

The IA considered that the biggest oil and gas companies were diligent in providing the data, whereas the mining companies were reluctant to report. It was noted that sometimes the IA had to chase after companies in order to receive the EITI reporting forms, that eventually caused significant delays.

The Draft Law on Transparency of Information in the Extractive Industries exemplifies the engagement of all stakeholders, including extractive sector companies. All consistencies of the MSG declared their support to this draft law, which will oblige companies to report to UAEITI for the purpose of EITI Reports, or face fines. Only companies had some concerns regarding the size of the fines and have outlined these concerns in a letter to the Committee on Fuel and Energy Complex, Nuclear Policy and Nuclear Safety (American Chamber of Commerce in Ukraine, n.d.). Still, they reaffirmed their support towards the draft law.

## Initial assessment

The International Secretariat's initial assessment is that **Ukraine** has made **satisfactory** progress in meeting this requirement. The largest mining, oil and gas companies are actively and effectively engaged in the EITI process, both as providers of information and in the design, implementation, monitoring and evaluation of the EITI process. There are clear legal provisions requiring EITI reporting for all oil and gas companies in Ukraine, that enable the largest extractive taxpayers to report. However, reporting from the mining industry remains challenging. Although comprehensive reporting from all material companies is challenging (see Requirement 4.9).

## Civil society engagement in the EITI process (#1.3)<sup>25</sup>

### Documentation of progress

With regards to civil society, activities are mainly coordinated by the Association Energo Transparentnist,

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<sup>25</sup> The first Validation under the EITI Standard (Azerbaijan 2016) established a precedent for the Validation of requirement 1.3. The CSO protocol "operationalises" requirement 1.3. Each part of the CSO protocol speaks to specific parts of Requirement 1.3:

2.1 of the CSO protocol is intended to assess provisions 1.3(d), 1.3(e)(i) and 1.3(e)(iv).

2.2 of the CSO protocol is intended to assess provisions 1.3(b) and 1.3(c).

2.3 of the CSO protocol is intended to assess provision 1.3(e)(iii).

2.4 of the CSO protocol is intended to assess provisions 1.3(a) and 1.3(e)(ii).



hereinafter “the Association”, created in 2009. The Association comprises more than ten NGOs, including NGOs engaged in research and analysis, and NGOs focusing on extractive sector issues. The Association has its own governing rules, and receives financial support from various local and foreign donors. Information about EITI activities is published on the Association’s webpage at the national EITI website<sup>26</sup>. The Association collaborates with international civil society groups, including PWYP, to which it became affiliated in early 2013; Natural Resource Governance Institute; Soros foundations in Eurasia; and GIZ. The Association is currently coordinated by Vitaliy Filenko from Nova Energia, Kharkiv. However, one of the main driving forces for the EITI process is Dixi Group, headed by Olena Pavlenko.

### Expression:

There is no evidence to suggest legal or regulatory constraints on civil society organisations’ ability to freely express their views with regards to the EITI process. The constitution<sup>27</sup> and Law on Information<sup>28</sup> provide for freedom of speech and press. The government has introduced measures<sup>29</sup> that have banned or blocked information, and Russian-owned social networks and media outlets like Odnoklasniki, mail.ru, Yandex and V Kontakte<sup>30</sup>. According to the US Department of State’s Report on Human Rights in Ukraine, in the occupied Donbas region, Russian-backed separatists have suppressed freedom of speech and the press through harassment, intimidation, abductions and assaults on journalists and media outlets (US Department of State, 2016). They also have prevented the transmission of Ukrainian and independent television and radio programming in areas under their control. In return, the government has introduced amendments to prohibit statements that threaten the country’s territorial integrity, promote war, instigate racial or religious conflict, or support Russian aggression towards Ukraine.

According to Freedom House, the press in Ukraine is ranked “partly free”<sup>31</sup>. However, independent media and Internet news sites are active and express a wide range of views. Privately-owned media, which is generally owned by influential “oligarchs”, often present readers with the views of their owners, favourable coverage of their allies, and critical coverage of political and business rivals (US Department of State, 2016). According to the State Book Chamber<sup>32</sup>, there are 3,221 printed media, of which 1,146 are published in Kyiv.

Despite general constraints, there is no evidence of barriers to press freedom or self-censorship amongst CSOs with regards to mining, oil and gas or other EITI-related issues, and there are numerous examples<sup>33</sup> of civil society criticising government oversight of the sectors, including through numerous publications<sup>34</sup>,

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2.5 of the CSO protocol is intended to assess provision 1.3(d).

<sup>26</sup> <http://eiti.org.ua/en/category/news/energotransparentnist/>

<sup>27</sup> Constitution of Ukraine, available in Ukrainian, <http://zakon2.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>

<sup>28</sup> Law of Ukraine on Information, amended in 2016, available in Ukrainian

<http://zakon3.rada.gov.ua/laws/show/%D0%BF%D1%80%D0%BE%20%D1%96%D0%BD%D1%84%D0%BE%D1%80%D0%BC%D0%B0%D1%86%D1%96%D1%8E>

<sup>29</sup> <https://www.hrw.org/news/2017/05/16/ukraine-revoke-ban-dozens-russian-web-companies>

<sup>30</sup> <https://www.economist.com/news/europe/21722360-blocking-websites-may-be-pointless-it-could-help-president-poroshenkos-popularity-ukraine>

<sup>31</sup> <https://freedomhouse.org/country/ukraine>

<sup>32</sup> <http://detector.media/rinok/article/128806/2017-08-10-v-ukraini-vikhodyat-ponad-3-tis-drukovanikh-zmi/>

<sup>33</sup> <http://dixigroup.org/eng/comments/khto-zavaliv-zakon-pro-prozorist-vidobuvnikh-galuzey/>

<sup>34</sup> <https://ua-energy.org/en>



statements<sup>35</sup>, analytical reports<sup>36</sup>, studies<sup>37</sup>, research<sup>38</sup>, briefs<sup>39</sup>, conferences<sup>40</sup>, press conferences<sup>41</sup>, public events<sup>42</sup>, roundtables and public debates<sup>43</sup>. For example, in July 2017 DIXI Group, a think tank, organised a panel discussion<sup>44</sup> between investigative journalists and law enforcement agencies (e.g. National Anti-Corruption Bureau) to improve their collaboration with regards to the energy sector. DIXI Group, with the support of IRF and USAID, maintains an independent media portal [www.ua-energy.org](http://www.ua-energy.org) that covers energy issues in Ukraine, including the extractive industries. Minutes from MSG meetings show that CSOs are able to speak freely about the EITI process without restraint or coercion, including criticising both government and industry constituencies.

### Operation:

There is no evidence of any legal, regulatory or administrative obstacles affecting the ability of civil society representatives to participate in the EITI process. Civil society is governed by the Law on Public Associations<sup>45</sup> that was adopted in 2012, which has significantly simplified the operation of NGOs. According to ICNL's overview<sup>46</sup>, the Law is in compliance with European standards and it introduces the following provisions: simplified registration procedures for public associations; the right of NGOs to pursue any lawful interest or objective; the right of legal entities to establish and to acquire membership in public associations; the right to conduct activities throughout the territory of Ukraine, regardless of the place of registration; and the right of NGOs to engage in entrepreneurial activities to support their not-for-profit activities<sup>47</sup> (Law of Ukraine on Public Associations, 2012).

However, on 27 March 2017 President Petro Poroshenko approved amendments to Ukraine's 2014 law on preventing corruption, that from 2018 require activists and journalists working with independent organisations involved in anti-corruption work, as well as members of public councils, to publicly declare their personal assets in the same manner as politically exposed persons<sup>48</sup>. According to so-called the e-declaration amendments, NGO failing to file asset declarations face criminal charges and up to two years in prison. Such amendments raised a wave of condemnation and concern from the European Union<sup>49</sup>, US and UK diplomats<sup>50</sup>, as well as the international organisations such as Human Rights Watch, Freedom House<sup>51</sup> and Amnesty International. Views of the local civil society divided. The CSOs that are directly

<sup>35</sup> <http://dixigroup.org/eng/news/gromadski-organizacii-ta-analitichni-centri-pidgotuvali-zayavu-shchodo-virishennya-problem-energetichnoi-zalezhnosti-ukraini/>

<sup>36</sup> <http://dixigroup.org/eng/publications/dorozhnya-karta-reform-u-politici-upravlinnya-prirodnimi-resursami/>

<sup>37</sup> <https://ua-energy.org/en/materials?utf8=%E2%9C%93&category%5B%5D=3>

<sup>38</sup> <http://dixigroup.org/eng/news/uryad-maye-zvazhen-pidtyti-do-vidatkiv-na-subsidii--doslidzhennya-dixi-group/>

<sup>39</sup> [http://dixigroup.org/storage/files/2016-08-19/polpaper\\_ua\\_energy\\_transition\\_factors.pdf](http://dixigroup.org/storage/files/2016-08-19/polpaper_ua_energy_transition_factors.pdf)

<sup>40</sup> <http://dixigroup.org/eng/news/nova-onlayn-karta-energosektoru-dozvolit-lyudyam-pobachiti-za-shcho-voni-platyat-vlasni-groshi--ekspert/>

<sup>41</sup> <http://dixigroup.org/eng/news/eksperti-za-prikhovuvannya-danikh-pro-vidobutok-peredbacheni-shtrafi/>

<sup>42</sup> <http://dixigroup.org/eng/news/igri-gazovikh-prestoliv-dixi-group-prezentuye-doslidzhennya-korupciynikh-skhem-u-vidobutku-gazu/>

<sup>43</sup> <http://dixigroup.org/eng/news/dixi-group-iniciyuye-debati-shchodo-vugilnikh-shakht/>

<sup>44</sup> <http://dixigroup.org/eng/news/predstavniki-media-ta-eksperti-spilno-shukali-shlyakhi-yak-zmusiti-pravookhoronciv-reaguvati-na-zhurnalistiki-rozsliduvannya-v-galuzi-energetiki/>

<sup>45</sup> Law of Ukraine on Public Associations, 2012, available in Ukrainian <http://zakon3.rada.gov.ua/laws/show/4572-17>

<sup>46</sup> <http://www.icnl.org/news/2012/22-Mar.html>

<sup>47</sup> The English translation of the Law on NGOs is available on the ICNL website, <http://www.icnl.org/research/library/files/Ukraine/public-associations-ENG.pdf>

<sup>48</sup> <https://www.hrw.org/news/2017/04/05/ukraine-new-law-targets-anti-corruption-activists-journalists>

<sup>49</sup> <https://www.radiosvoboda.org/a/news/28389531.html>

<sup>50</sup> <http://www.pravda.com.ua/news/2017/03/24/7139174/>

<sup>51</sup> <https://www.radiosvoboda.org/a/news/28395401.html>

affected by the e-declaration amendments have raised concerns and lamented on the intimidating nature of these amendments (Transparency International Ukraine, 2017). Others do not share concerns of anti-corruption activities and think that the general concept of submitting e-declarations is good practice, although they acknowledge that the amendments could be used against those NGOs that require changes at the local level and reforms at the state level<sup>52</sup>.

In July, the Presidential Administration introduced two draft laws, 6674 and 6675, to ensure public transparency of the financing of the public associations and the use of international technical assistance. If adopted, the draft NGO laws would amend Ukraine's tax law and other legislation to require non-governmental organisations with annual budgets above USD 18,500 to report publicly online about their funding and staff salaries. Consultants and companies that provide services for NGOs, for instance, freelance work, cleaning services, or catering for events, would also need to publicly report funds they received and their sources. The groups and the tax agency would be required to publish the reports on their websites. Ukrainian law already obliges non-governmental organisations to submit numerous reports to the state tax authorities and other government agencies (ICNL, 2017). Human Rights Watch (HRW), Amnesty International and Freedom House have urged the Presidential Administration to withdraw the proposals (Human Rights Watch (HRW), Amnesty International and Freedom House, 2017).

Nevertheless, there is no evidence suggesting, that the above-mentioned amendments have in any way affected civil society representatives' ability to participate in the EITI. It is too soon to conclude if the e-declaration amendments would hinder civil society's operation, including NGOs engaged in the EITI, as the Presidential Administration is keen to review these in 2018. Furthermore, there is no evidence, that civil society representatives have been restricted in relation to the implementation of the EITI process, such as restrictions on freedom of expression, operation and access to funding.

#### Association:

There is no evidence to suggest that there are restrictions or limitations on NGOs engaged with the EITI, in terms of their ability to associate, communicate and cooperate with other national or international NGOs. Ukraine's constitution provides citizens with the right to freedom of assembly, and the government generally has respected this right (US Department of State, 2016). Civil society in Ukraine is well developed and it is estimated that there are about 50,000 CSOs registered in the country<sup>53</sup>.

According to the State Statistics Service, there are 23,237 NGOs, of which 958 are registered in Kyiv, and the total amount of funding received in 2016 is UAH 6.2 b (USD 233.3 m) (State Statistics Service, 2017). According to the Ministry of Justice, there are about 50,000 civil society organisations registered in Ukraine<sup>54</sup>, of which 66% are local, national and international non-governmental organisations, 0.3% are political parties, and 31% are local, all-Ukrainian and international charitable organisations.

Civil society has been actively involved in Ukraine's EITI process from the outset. Most of the NGOs

<sup>52</sup> <http://www.pravda.com.ua/columns/2017/09/21/7155896/>

<sup>53</sup> See ref. 45

<sup>54</sup> <http://old.minjust.gov.ua/33565>

directly represented on the MSG are members of the Association “Energo Transparentnist”. IRF is the only donor organisation represented on the MSG as a part of the CSOs constituency. The Association was founded in 2009, with support from IRF, by Dixi Group, Center Nomus and Q-Club. Its founding purpose was to advocate for Ukraine to join the EITI. After five years of advocacy campaigning, Ukraine joined the EITI. The Association has grown to ten permanent and active members and is consistently engaged with other CSO networks, such as RPR<sup>55</sup>, Energy Reforms<sup>56</sup>, environmentalists<sup>57</sup>, investigative journalists<sup>58</sup>, etc. The members meet once a year to elect its coordinator and to agree on the strategic priorities for the next year.

The Association is governed by the Operating Principles that stipulate its objectives; general rights and responsibilities; and election procedures for the MSG membership (Association “Energo Transparentnist”, 2012). In particular, the members are responsible for sharing information on the EITI and extractive industries with the public. The Association is open, and to become a member, a CSO should complete and submit a short application form. According to stakeholder consultations, it is not the Association’s intention to greatly enlarge its membership, but rather to collaborate with other relevant networks. The Association is affiliated with PWYP. Representatives of the Association are permanently in contact with PWYP, NRGI and other international organisations; and often attend/organise relevant events, workshops and regional meetings. In particular, the Regional Eurasia CSO meeting was held in Lviv, Ukraine in September 2016. In May 2015, the Association, with support from PWYP, GIZ and IRF, organised a Eurasia regional workshop in Kyiv for civil society engaged in the EITI.

There are currently eight CSOs represented on the MSG, of which six are based in the extractive regions: Analytical Centre for Regional Cooperation (Lviv); ‘Bureau of Development, Innovation and Technology’ NGO (Ivano-Frankivsk); Dixi Group think tank (Kyiv); IRF (Kyiv); Nova Energia NGO (Kharkiv); the public organization ‘Poltava Branch of the Public Service of Ukraine’ (Poltava); Research Centre for Issues in Eastern Ukraine (Dnipro); and XXI Strategy (Kyiv).

In 2016, with support from GIZ and IRF, the Association members implemented a project on ‘Development of a network of partner organisations for implementation of the EITI Communication Strategy in the mining regions of Ukraine’<sup>59</sup>. The project consisted of outreach activities in the main extractive regions (Sumy<sup>60</sup>, Poltava<sup>61</sup>, Myrhorod<sup>62</sup>, Kharkiv, Chernigiv<sup>63</sup> and Lviv<sup>64</sup>) and helped to identify local NGOs and activities that were interested in being engaged with EITI activities. As a result, the Association enlarged its partner network and increased its members. In addition to this, civil society has contributed to a number of capacity building events and projects. For instance, Eurasia Hub regional

<sup>55</sup> Reanimation Package of Reforms <http://rpr.org.ua/en/>

<sup>56</sup> <http://enref.org/>

<sup>57</sup> <http://www.rac.org.ua/dlya-media/pres-relizy-ta-komentari/27092017-evropeyski-tendentsiyi-na-poryadku-dennomu-ekologichnykh-reform>

<sup>58</sup> <http://dixigroup.org/eng/news/v-dixi-group-pidgotuvali-rekomendacii-dlya-pokrashchennya-spivpraci-zhurnalistiv-rozsliduvachiv-ta-pravookhoronnikh-organiv>

<sup>59</sup> <http://eiti.org.ua/2016/04/na-poltavschyni-shukaly-yak-vyrishyty-problemy-u-hromadah-de-vidbuvajetsya-vydobutok/>

<sup>60</sup> <http://eiti.org.ua/2016/03/pro-initsiatyvu-prozorosti-rozpovily-zhurnalistam-chernihivschyny/>

<sup>61</sup> <http://eiti.org.ua/2016/04/u-poltavi-radylysya-yak-vyrishyty-problemy-hromad-za-dopomohoyu-ipvh/>

<sup>62</sup> <http://eiti.org.ua/2016/04/hromady-myhorodschyny-hochut-prozorosti-ta-chastku-vid-vydobuvnoji-renty/>

<sup>63</sup> <http://eiti.org.ua/2016/05/u-varvi-na-chernihivschyni-hovoryly-pro-pererozpodil-ekolohichnoho-podatku/>

<sup>64</sup> <http://eiti.org.ua/2016/05/na-lvivschyni-hotuyutsya-stvority-fond-rozvytku-vydobuvnoji-hromady/>

trainings in Istanbul and Baku (annually); PWYP/NRGI Eurasia regional meetings (annually); international and local conferences/forums; etc. In particular, the Association and PWYP organised a three-day regional workshop on EITI<sup>65</sup>, bringing together NGOs from 10 countries. Dixi Group together with NRGI conducted a project on Increasing civil society's capacity in support and control of the EITI implementation in Ukraine in 2013-2014<sup>66</sup>.

### *Engagement:*

Civil society is fully, actively and effectively involved in the design, implementation, monitoring and evaluation of the EITI through its participation in MSG meetings, CSO conferences and outreach activities both in the capital Kyiv and in the regions, dissemination events and other channels.

There is ample evidence of civil society representatives contributing actively to the scope and production of the EITI Reports by providing expert input on the reporting templates, participating in ad-hoc working groups, commenting on ToRs for the IA, drafting comments and suggested edits to the EITI Reports etc. During the preparation of the 2013 EITI Report, the civil society group pressured<sup>67</sup> the State Fiscal Service to provide full revenues disclosure. A Facebook post<sup>68</sup>, shaming SFS, gathered more than 7000 views and 32 shares and resulted in full government disclosure.

In addition, civil society representatives have prepared a number of analytical studies based on the data disclosed in the EITI Report. For example, based on the 2014-15 EITI report, CSOs prepared an analytical report, analysing Ukraine's fiscal regime that government extractive industries (Dixi Group, 2017). CSOs engaged in the EITI activities are also working on other projects related to anti-corruption, government reforms in the energy sector, and not necessarily use the EITI brand. For instance, a study named 'Game of Gas Thrones: presentation of the most widespread "schemes" in gas production' is not labelled as a usual EITI study, however introduces an innovative way of investigating corruption schemes in the license allocation and leads to recommendation of adoption the EITI Law (Dixi Group, 2016).

In terms of capacity to participate in the EITI, civil society has participated in and contributed to a number of capacity building events and projects. Examples include Eurasia Hub<sup>69</sup> regional trainings in Istanbul and Baku (annually); PWYP/NRGI Eurasia regional meetings<sup>70</sup> (annually); international and local conferences/forums; etc. In 2015-2017 the Association had a project on Municipal Finance Strengthening Initiative (MFSI-II)<sup>71</sup>, supported by USAID, aimed at capacity building for local communities. The civil society engaged in the EITI receives funding from multiple sources, such as IRF, EU, WB, USAID, GIZ, DFID, SIDA and some embassies.

The minutes from MSG meetings point to active engagement over the years and it is clear that there is capacity amongst wider civil society to engage in questions related to the extractive sector. Analysis of MSG meeting attendance reflects the strong and consistent engagement of civil society, with most

<sup>65</sup> <http://eiti.org.ua/2015/05/hromadski-orhanizatsiji-ukrajiny-ta-krajini-evraziji-vyrobyly-plan-dij-dlya-pidtrymky-eiti/>

<sup>66</sup> <http://dixigroup.org/eng/projects/pidvishchennya-spromozhnosti-gromadyanskogo-suspilstva-v-pidtrimci-implementacii-eiti-v-ukraini/>

<sup>67</sup> <http://eiti.org.ua/2015/11/pid-tyskom-hromadskosti-dfs-nadala-dani-dlya-zvitu-ipvh/>

<sup>68</sup> [https://www.facebook.com/pg/UAETI/posts/?ref=page\\_internal](https://www.facebook.com/pg/UAETI/posts/?ref=page_internal)

<sup>69</sup> <http://dixigroup.org/eng/news/predstavnik-dixi-group-vzyav-uchast-u-regionalnomu-treningu-eiti-v-turechchini/>

<sup>70</sup> <http://dixigroup.org/eng/news/predstavnik-dixi-group-vzyala-uchast-u-zustrichi-vevraziyskogo-regionu-v-ramkakh-eiti-v-mongolii/> ;

<http://eiti.org.ua/2016/10/pro-dosvid-vprovadzhennya-ipvh-hovoryly-na-zustrichi-evraziyskoho-rehionu/>

<sup>71</sup> [http://www.ibser.org.ua/en/project\\_mfsi](http://www.ibser.org.ua/en/project_mfsi)

members participating at all MSG meetings.

#### Access to public decision-making:

Civil society's ability to access public decision-making in Ukraine is regulated by the United Nations Convention against Corruption, a Law on Local Self-Governance, Law On Appeal of Citizens and Law on Information and Law on Public Associations (UN Convention against Corruption, 2006), (Law on Local Self-Governance, 2017). There is ample evidence of CSOs being a major driver for the reforms, including via active engagement in analysis and advocacy on natural resource issues. For instance, the civil society group took part in developing Law No 521-VIII On the Introduction of Amendments to Certain Legislative Acts of Ukraine on Ensuring Transparency in Extractive Industries that was adopted in June 2015. Furthermore, the CSOs MSG members initiated drafting Law 6229 on Transparency of Information in the Extractive Industries<sup>72</sup> and held a number of advocacy events<sup>73</sup> together with the members of Parliament<sup>74</sup>. Dixi Group also campaigns<sup>75</sup> for other changes in the legal system for the extractive industries aligned with the EU Association Agreement commitments<sup>76</sup>.

Civil society representatives on the MSG have been organising workshops and trainings to build capacity<sup>77</sup> of the broader civil society to analyse EITI data. Efforts have also been made to disseminate the findings and advocate for more transparent management of the sector. According to the 2016 Annual Progress Report, CSOs and the UA-EITI organised 74 outreach and dissemination events in Kyiv and regions (UAEITI, 2017). There is evidence of civil society representatives' engagement with media outlets to communicate the findings of the EITI Reports. For instance, NGO 'Nova Energia' held a series of workshops<sup>78</sup> on the EITI data for journalists working in the extractive regions and announced a writing contest, gathering 30 media publications, TV and radio live programmes<sup>79</sup>.

### Stakeholder views

#### Expression:

All civil society members agreed that there were no cases of restricted freedom of expression, whether related or not related to the extractive industries. Civil society was able to express openly critical views with regards to the government's policy on the natural resource governance.

A representative of an international organisation highlighted issues related to a degree of pressure on investigative journalists. It was noted that the anti-Russian propaganda of Ukraine's government is hampering freedom of speech.

Representatives of the government and companies noted that the civil society group was very active and vocal on the extractive industries issues during the public events and MSG meetings.

<sup>72</sup> The draft law is available in Ukrainian [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=61409](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=61409)

<sup>73</sup> <http://dixigroup.org/eng/news/krugliy-stil-shchodo-zakonoproektu-pro-rozkrittya-informacii-u-vidobuvnikh-galuznykh/>

<sup>74</sup> [http://dixigroup.org/eng/news/obgovorenniya\\_komiteta/](http://dixigroup.org/eng/news/obgovorenniya_komiteta/)

<sup>75</sup> <http://dixigroup.org/eng/news/predstavnik-dixi-group-vzyav-uchast-v-obgovorenni-zakonoproektu-pro-rinok-elektroenergii/>

<sup>76</sup> <http://dixigroup.org/eng/news/yevroreformi-v-energetici-z-chim-pochinayemo-2017-rik/>

<sup>77</sup> <http://dixigroup.org/eng/news/dixi-group-podililas-dosvidom-v-advokacii-eiti/>

<sup>78</sup> <http://eiti.org.ua/2017/05/vidbuvsya-seminar-pro-prozorist-v-haluzi-dlya-zhurnalistiv-poltavschyny/>

<sup>79</sup> <http://eiti.org.ua/2016/12/oholosheno-peremozhtsiv-konkursu-zhurnalistykh-materialiv-pro-ipvh/>

Operation:

A representative of an international organisation confirmed that the current legislation does not impose any challenges when registering an NGO. However, the anti-corruption amendments could prevent civil society from fundraising and executing any anti-corruption projects.

All civil society representatives within the MSG and outside confirmed that there were no obstacles to peaceful meetings neither related to the natural resource governance, nor to any other issues. CSOs MSG members strongly criticised the various aspects of the e-declaration amendments signed by the President in May 2017 were disgraceful and contradictory. The members' critic covered the contradictory and ambiguous nature of the amendments and the difficulty in implying them in practice. Some representatives considered that the adoption of the e-declaration amendments represented a form of revenge on anti-corruption NGOs for their strong lobbying for public disclosure of politically exposed persons' asset declarations. These representatives noted that Association members were happy to be transparent about their funding, but condemned some of the provisions in the amendments. CSO MSG members agreed that civil society was not oppressed in any way. Although, some CSO representatives agreed that the e-declaration amendments could hamper Ukraine's image with regards to nurturing CSO freedoms. It was noted that none of the CSO MSG members would provide e-declarations in accordance with the amendments. It was mentioned that President Poroshenko publicly regretted adoption of the e-declaration amendments and created a working group to new amendments in consultation with the international community and local civil society.

CSOs outside the MSG shared concerns with regards to the e-declaration amendments and their possible effect on their activities. They were not keen to follow the amendments. It was stressed that the government could manipulate the new amendments to create pressure to the anti-corruption organisations.

Government representatives commented that the working group under the President was reviewing the e-declaration amendments to suggest further changes that civil society would be happy with. Representatives of companies did not have particular views in this regard. Development partners expressed concerns over the anti-corruption amendments and expected the government to cancel or amend them by the end of 2017.

Association:

All civil society representatives on the MSG and beyond confirmed that there were no obstacles to peaceful meetings.

Association members explained that it was an open coalition and welcomed new members, but did not intend to largely increase its membership. The current composition worked well and efficiently, covering all extractives regions in Ukraine. Instead, they preferred to create more partnerships and projects with other CSOs networks (such as Reanimation Reform Package), investigative journalists, environmental NGOs and others. It was noted that the Association had simple rules, met once a year and made decisions by majority voting. To become a member, a NGO had to submit a simple application, expressing its interest in joining. Last year the Association accepted a few new members from the regions. One representative highlighted that all the new members were given an opportunity to build their capacity on the EITI through events on EITI and shared funding opportunities. All the updates, announcements of



events and opportunities are communicated through an open Facebook page.

Stakeholders confirmed that the Association was an open coalition that welcomed anyone who wished to join, with the majority of new members joining through different events and cooperation. We don't aim to increase the membership of the association and the large number does not mean good quality. The current team is very effective and covers all extractive regions in Ukraine.

Government and company representatives did not express any particular views on civil society association.

#### Engagement:

Civil society representatives cited ample examples of their involvement in the design, implementation and monitoring of the EITI process. This included contributions to the work plan, the annual progress report, extensive work on the production of the EITI report as well as through analysis of the data and associated research. One CSO MSG member highlighted a project on Municipal Finance Strengthening Initiative (MFSI-II) supported by USAID, aimed at capacity-building for local communities and sub-grants to local NGOs in extractive regions.

#### Access to public decision-making:

One development partner considered that civil society was the main driving force in EITI implementation and that Ukraine would not have joined the EITI had CSOs not been proactive in lobbying and advocacy.

CSOs MSG members cited ample examples of their involvement in the decision-making process through providing recommendations and comments; organising round tables, press conferences and public debates; participating in the governmental advisory and working groups; and working with the members of Parliament.

### Initial assessment

The International Secretariat's initial assessment is that **Ukraine** has gone **beyond** the EITI requirements on civil society engagement. There is a strong and vibrant civil society, which is fully, actively and effectively engaged in the EITI process and has contributed significantly to EITI implementation in Ukraine. Since 2009, civil society has fundamentally driven the EITI process, providing high-quality feedback throughout the process; influencing policies and shaping the reform agenda for the government; and effectively utilising the results of the EITI disclosures (*ref. assessment of Requirement 7*).

Civil society representatives' ability to participate in the EITI process is not restricted or affected by the legal, regulatory, administrative and actual environment. MSG minutes and public statements by civil society members demonstrate that civil society is substantially engaged in the design, implementation and monitoring of the EITI implementation and plays a driving role in overseeing the EITI reporting process and contributing to public debate related to extractive sector governance.

However, the e-declaration amendments raise concern for the future civil society engagement in the EITI. The government should consider removing any obstacles that these amendments could imply on the future civil society operation.

## MSG governance and functioning (#1.4)

### Documentation of progress

#### MSG composition and membership:

The MSG was established by Ministerial Order № 785 on 10 October 2012 and comprised 18 members. In 2017, the MSG decided to enlarge its composition to 24 members, adding two more seats to each constituency (UA-EITI, 2016d). The MSG ToRs does not envisage alternates. The eight government members include Deputy Minister of Energy and Coal Industry Natalya Boyko, the MSG Chair, and representatives from the National Commission for State Regulation of Energy and Public Utilities (NKREKP); State Service of Geology and Mineral Resources; Ministry of Economic Development and Trade (MED); Ministry of Finance (MoF); Ministry of Energy and Coal Industry (MECI); Ministry of Ecology and Natural Resources (MENR); and State Fiscal Service (SFS). Industry's eight MSG representatives include Kadogan Ukraine, PJSC Ukrghazvydobuvannya, DTEK Energo, Ukrtransgaz, DTEK Naftogaz, ENI Ukraine, Arcelor Mittal, and Naftogaz Ukraina. Civil society also has eight MSG seats, that include representatives from XXI Strategy; Research Centre for Issues in Eastern Ukraine; Public Organization 'Poltava Branch of the Public Service of Ukraine'; Dixi Group think tank; IRF; NGO 'Bureau of Development, Innovation and Technology'; NGO 'Nova Energia'; and Analytical Centre for Regional Cooperation.

According to Ukraine's Candidature application, the invitation to participate in the MSG was sent to all interested ministries and departments, private and state-owned companies, including the American Chamber of Commerce, European Business Association, and the civil society's Energy Transparency Association. Each constituency was invited to nominate six members. Civil society representatives were nominated by the resolution of the semi-annual General Meeting of the Energy Transparency Association to serve on the MSG for a period of two years (Association "Energo Transparentnist", 2012). Company representatives were nominated after consultations with the World Bank. There is a good mix between foreign and Ukrainian companies - Kadogan Ukraine, ENI Ukraine, Arcelor Mittal, PJSC Ukrghazvydobuvannya, DTEK Energo, Ukrtransgaz, DTEK Naftogaz, and Naftogaz Ukraine.

Article 5.1 stipulates that the composition of the MSG is formed on equal terms and all constituencies should be represented numerically equal – eight members per constituency. Every constituency has a right to hold an independent nomination process free from any suggestion or coercion. Every constituency is responsible for open and transparent invitation to participate in the MSG. Article 5.14 stipulates that the Deputy MSG Chair should be appointed from the civil society constituency. The current Deputy MSG Chair is Olena Pavlenko, President of the DIXI Group think tank.

Articles 5.2 provides basis for the company constituency to define nomination criteria and the process for the MSG election. Article 5.3 says that the government representatives are selected by the responsible Ministry, based on their involvement in the EITI reporting process. Article 5.4 says that the civil society members are represented by the NGO Coalition 'Association EnergoTransparentnist' or any other coalition of NGOs that work on the extractive industries issues. The civil society group is free to hold its independent process of nomination and selection of the MSG members. The Tors stipulate that CSOs MSG members should be operationally and in policy terms, independent.

#### Civil society representation:

The selection process for civil society MSG members was broadly consultative and open to all. After the



initial consultations around EITI Candidature in Q2 2012 and the government's invitation to the MSG, the Association EnergoTransparentnist conducted the nomination and election process for MSG representatives from the civil society constituency. In May 2017, the CSOs constituency renewed its representatives following an annual self-appraisal process that assesses the performance of CSOs on the MSG and nominated two new members, following the expansion of the MSG (Association EnergoTransparentnist, 2017). There are currently eight CSOs represented on the MSG: Andriy Chubyk, XXI Strategy; Denys Kazakhyskiy, Research Centre for Issues in Eastern Ukraine; Ganna Kiyaschenko, Public Organization 'Poltava Branch of the Public Service of Ukraine'; Olena Pavlenko, Dixi Group think tank; Oleksiy Orlovsky, IRF; Maksym Karpash, NGO 'Bureau of Development, Innovation and Technology'; Vitaliy Filenko, NGO 'Nova Energia'; and Vlad Deyneko, Analytical Centre for Regional Cooperation. Seven representatives are members of the Association and five of them are based in the regions. The constituency offered the eighth seat to IRF as one of the key supporters of the EITI process in Ukraine.

#### Industry representation:

Company constituency comprises either representative, such as: Andriy Bilyi, Kadogan Ukraine; Andriy Tymoshenko, PJSC Ukrengazdobuvannya; Dmytro Pryschepa, DTEK Energo; Milan Nayda, Ukrtransgaz; Natalia Grebenyuk, DTEK Naftogaz; Olga Adamovska, ENI Ukraine; Olga Lutsyk, Arcelor Mittal; and Sergiy Kosyanchuk, Naftogaz Ukraina. Provision 5.1 of the MSG ToRs envisages that each constituency has the right to appoint its representatives independently and any suggestion of coercion. Each constituency provides an open and transparent invitation to participate in its group and maintains appropriate contacts with its representatives (UA-EITI, 2016b). In practice, the American Chamber of Commerce (ACC) and the Association of Gas Producers of Ukraine represent the private extractive companies on the MSG. The latter is also a member of ACC. The nomination and election process is held in a straightforward way. ACC sends out an open call for nominating MSG members among its member extractive companies. The results are discussed by an industry committee of ACC and the results are shared with the MECI. The industry representation was renewed in May 2016, following a request from MECI to nominate two more members to the MSG (American Chamber of Commerce in Ukraine, 2016b). As a result, DTEK Energo and Arcelor Mittal joined the MSG from the mining companies.

#### Government representation:

The government has eight members on the MSG which consist of Natalia Boyko, Deputy Minister of Energy and Coal Industry, MSG Chair; Anton Gudachenko, National Commission for State Regulation of Energy and Public Utilities (NKREKP); Andriy Grygorash, State Service of Geology and Mineral Resources; Olena Dyachenko, Ministry of Economic Development and Trade (MED); Larysa Melnychenko, Ministry of Finance (MoF); Oleksandr Ponomarenko, Ministry of Energy and Coal Industry (MECI); Oleksandr Tarasenko, Ministry of Ecology and Natural Resources (MENR); and Oleksandr Shumskyi, State Fiscal Service (SFS). MECI leads on the nomination process for the government representatives. The constituency was renewed in May 2016. In particular, MECI sent out letters to the relevant government entities, inviting them to nominate new representatives to the MSG (Ministry of Energy and Coal Industry, 2016). Following the MSG enlargement process, MENR nominated two representatives – Oleksandr Tarasenko, Deputy Head of Department on International Cooperation and Sergiy Suprun, Deputy Head of Legal Department under the State Service of Geology and Mineral Resources (Ministry of Ecology and Natural Resources, 2016).

#### Terms of reference:

The multi-stakeholder group has clear Terms of Reference (ToRs) and regulations that are in line with

EITI requirements. The MSG ToRs and regulations were approved at the fourth meeting of the MSG on 26 December 2012 (Decree №785, 2012). In 2016, the MSG revised the ToRs in accordance with the 2016 EITI Standard and changed the MSG composition by adding two more members per constituency – six in total. On 12 January 2016 Ministerial Decree institutionalised the change in the MSG composition (Ministry of Energy and Coal Industry, 2016).

#### Internal governance and procedures:

Provision 4 of the ToRs includes specific language on the MSG's responsibility to regularly review and update the work plan, appoint the IA, approve the ToRs for the IA and the EITI Report, approve Annual Activity Reports and participate in outreach and dissemination activities. Article 4.5 of the ToRs foresees the responsibility of the MSG to oversee the EITI Reporting process and engage in Validation. Article 3.2.7 identifies that the MSG's main objective is stimulating public debate that would lead to improvement of the governance of the extractive industries. The ToRs do not document governance of conflict of interest. The ToRs does not regulate functioning of ad hoc working groups; however, the MSG often practices establishment of working group, in particular when it comes to preparing the EITI reports and other relevant papers.

Articles 3.2.4 and 3.2.5 specify that MSG should encourage broad civil society and companies to be involved in the EITI process in Ukraine. In particular, the CSOs MSG constituency should encourage civil society to be involved in planning, monitoring and evaluation of actions, processes and organisational tools related to the EITI implementation in Ukraine. With regards to the industry, the respective MSG members should update companies on the reporting process, including but not limited to providing guidance on the reporting templates.

#### Decision-making:

Article 2.4 of the ToRs defines the rules for the MSG's decision-making and notes that the MSG is governed by the principles of open and transparent discussion and decision making, in line with the legal system of Ukraine and the EITI Standard. Article 6.10 stipulates that the MSG undertakes an open voting by raising hands, i.e. by simple majority. During the course of the International Secretariat's stakeholder consultations, it became clear that while the governance documents stipulate decisions by simple majority vote, evidence from MSG meeting minutes and consultations indicated that all decisions had always been taken by consensus.

#### Record-keeping:

Article 5.20 of the MSG's ToRs vests the UA-EITI Secretariat with responsibility for preparing and circulating meeting minutes and sets a one-week time limit for comments on draft minutes, which are approved on a no-objection basis. It also requires the secretariat to report the implementation status of past MSG decisions at subsequent MSG meetings (UA-EITI, 2016c). The MSG has kept, the approved and signed by the Chair, minutes of their meetings to date, however, they are available only on the internal UA-EITI website.

#### Capacity of the MSG:

There appears to be good capacity amongst MSG members to carry out their duties, among all three constituencies. Article 4.1 stipulates that MSG members should have the capacity to carry out their duties. Article 7.1 says that the responsible government entity should create appropriate conditions for

the work of the MSG, including providing venue for the meetings, office equipment, communication facilities, etc. Minutes of the MSG meetings document that the three constituencies have been fully and actively engaged in technical discussions related to reporting templates and engaged in the ad-hoc working groups, as well as participated in capacity building workshops locally and abroad.

#### Per diems:

Under the EITI Standard, the practice of per diems “should be transparent and should not create conflicts of interest” (Provision 1.4.b.vi). Article 5.9 of the MSG ToRs confirms that the MSG members who receive per diems or other financial remuneration for their participation in the MSG meetings should be transparent and not lead to a conflict of interest. To the knowledge of the International Secretariat, MSG members do not receive allowances or fees for attending MSG meetings. Article 2.3 of the ToRs state that participation in the MSG is done on a voluntary basis.

#### Attendance:

Article 6.2 of the MSG’s ToRs stipulates that the MSG meetings take place upon request and that there should be at least 4 meetings per year. The national secretariat should inform the members at least five working days ahead of the meeting. Analysis of MSG meeting attendance (in Annex B) shows that a quorum was reached at all MSG meetings. In practice, attendance at MSG meetings have been consistent for all three constituencies, although the level of participation has varied across different members of each constituency.

#### National secretariat:

The national secretariat is hosted by MECI and comprises three staff: Dina Narezhneva, Head of Secretariat; Olesia Nekhoroshko, Finance Manager; and Lesya Khomyak, PR coordinator. The secretariat is fully funded by the World Bank, however, the MECI submitted proposal to include the EITI implementation into the 2018 State Budget. Article 5.20 of the MSG ToRs vests the national secretariat with responsibility to update the MSG; prepare MSG meetings, agendas and keep records; organise EITI events; follow up on execution of the MSG decisions; and coordinate work with the IA, media, International Secretariat and the Board (UA-EITI, 2016c). According to Article 5.16 the national secretariat is accountable to the MSG Chair.

### Stakeholder views

With regards to stakeholder representation, stakeholders consulted said that were happy with the MSG composition, its functioning and the synergies it created. It was noted that the level of technical discussions on the MSG was complex and challenging, although MSG members were considered to be fully engaged, participating in a straightforward and honest way. The MSG sought solutions to existing issues at all times and tried to avoid any potential conflicts.

With regards to the civil society representation, stakeholders explained that the Association was responsible for the nomination procedures. It was a simple process as the Association members conducted a self-assessment exercise to evaluate its performance and attendance of the MSG meetings. In 2017, there were two members replaced as one of them could not carry out duties and the second one did not attend MSG meetings. The civil society group expressed satisfaction at its representation, noting that five members were from the extractive regions, covering all extractives areas of Ukraine, with only three from the capital. Stakeholder considered that representation of development partners in the civil society constituency of the MSG was advantageous.

With regards to the government representation, stakeholders explained that the responsible ministry sent out letters to the other government entities to nominate new members. It was noted that due to the political situation, the government official often changed positions and that it was challenging to secure consistent representation on the MSG. However, there were a few MSG members from the government constituency that kept the institutional memory. SFS had a strong representative that has been on the MSG since its establishment.

With regards to the industry representation, stakeholders were happy with their representation. State-owned companies were part of the industry constituency and held three seats on the MSG. Stakeholders explained that the last time the constituency renewed its representatives was in 2016, following the rotation procedures at the MSG. There were five representatives from the private companies on the MSG. The nomination process was coordinated by the ACC, that send out an open call for the MSG among its members and also few more associations (European Business Association, Association of Gas Producers). Five companies expressed interested and their candidatures were discussed at the ACC expert group meeting and approved. ACC notified MECI of the new members by an official letter.

With regards to the ToRs, stakeholders explained that in 2016 the MSG created an ad-hoc working group to renew the MSG's ToRs in accordance with the 2016 EITI Standard. It was noted that the ToRs was followed in practice and the stakeholders were happy with it. The MSG members confirmed that they did not receive any per diems for attends the meetings or other EITI-related events. Civil society representatives from the regions noted the instances when they received travel reimbursements. All MSG members confirmed that decisions were made through voting and that had no concerns in this regard. When making decisions they first sought consensus and only then held a vote.

In terms of the functioning of the MSG, stakeholders explained that the NSC meets about 4-5 times a year, and the meeting date is set with no less than a week's notice. The civil society members from the regions applied to IRF for the travel grants to come to Kyiv. The agenda and documents for the meeting would be proposed by the national secretariat, based on suggestions from MSG members. Stakeholders explained that MSG members had a week to comment on the meeting minutes, then the national secretariat adjusted the draft and passed it to the MSG Chair for a signature. The national secretariat confirmed that all the MSG meeting minutes were available and accessible through UA-EITI internal pages online. All MSG members were satisfied with the work of the secretariat in terms of servicing the MSG, providing timely circulation of agendas and documents and providing adequate time for stakeholders to study them. All MSG members agreed they were busy and appreciate the support of the national secretariat, in particular exercising an "online decision-making" via emails.

A few stakeholders commented that creating ad hoc working groups was very helpful. The working groups comprised all constituencies and proved to be effective. It was noted that companies held an active role in the group work, especially on preparation of the EITI reports and checking of the reconciliation data.

With regards to decision-making, stakeholders highlighted that were proud of the open democratic way of making decisions and that they always reached consensus on all the decisions. If an MSG member did not wish to express one's position on certain issues, it was possible to refrain from voting.

Stakeholders highlighted that civil society in Ukraine had a very strong role in EITI implementation. Civil

society was co-chairing the MSG, advised to the Minister of Energy and Coal Industries, worked directly with the members of Parliament, consulted the Cabinet of Ministers and the Presidential Administration; collaborated with the industry and when necessary used public and media pressure on SOEs and the separate government entities. For instance, when preparing the first EITI Report, SFS did not provide the government data on time, civil society launched a ‘name and shame’ campaign on social media and a few days later the IA received all the data from the government. Sometimes, CSOs MSG members had so to say ‘different hats’ as government advisers and watchdogs at the same time.

MSG members agreed that the UA-EITI Secretariat played a big and important role in implementing the EITI as most of the members have other commitments and tried to work remotely, whereas the secretariat provided daily support to the EITI process. All the MSG constituencies when consulted praised the work of the secretariat and expressed their gratitude to the excellent work of the Head of the national secretariat. The national secretariat appears to have a strong team and has been praised by all the stakeholder consulted.

### Initial assessment

The International Secretariat’s initial assessment is that **Ukraine** has made **satisfactory** progress towards meeting this requirement. The MSG has been formed and includes self-appointed representatives from each stakeholder group with no suggestion of interference or coercion. The CSO members of the MSG are operationally and in policy terms independent from government and companies. The ToRs for the MSG address all provisions of Requirement 1.4 and stakeholders renewed it in accordance with the 2016 EITI Standard. Meetings are convened with sufficient advance notice and MSG members appear to have sufficient time to review documents ahead of meetings. Attendance of the majority of MSG members is consistent.

## Work plan (#1.5)

### Documentation of progress

#### Publicly accessible workplan:

The MSG has agreed a work plan for EITI implementation over 2017, published on the UA-EITI website<sup>80</sup>. The MSG approved the 2017 work plan at its meeting on 22 February 2017 (UA-EITI, 2017e).

#### Implementation objectives:

The 2017 work plan includes three objectives for EITI implementation that are linked to the national priorities and EITI Principles. The objectives are as following:

1. Improving transparency and reducing corruption in the extractive industries.
2. Strengthening partnership between government, local self-governments, companies and local communities to decrease tensions.
3. Going beyond EITI framework: harmonization with the Energy Sector reforms.

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<sup>80</sup> <http://eiti.org.ua/biblioteka/>

*Measurable and time-bound activities:*

The work plan includes measurable and time bound activities to achieve agreed objectives. The timeline for activities is clear and indicates specific deadlines (monthly basis). Some of the activities have exact deadline dates and some have month and year indicated. The work plan includes a timetable for implementation that is aligned with EITI reporting and Validation deadlines. Annual review of the Work Plan in consultations with all stakeholders is noted in the work plan. The MSG reviews the work plan annually in practice.

*Activities aimed at addressing any capacity constraints:*

The work plan includes a section on capacity building for the MSG members and the national secretariat. For instance, the work plan includes an activity to hold a strategic planning session for the key EITI stakeholders to develop a clear strategic vision of further implementation of the EITI Standard.

*Scope of EITI reporting:*

The work plan addresses the scope of EITI reporting under sub-objective 1.1 on publishing the third EITI report of Ukraine. This includes plans for addressing technical aspects of reporting, such as review of the EITI scope, preparing ToRs for the IA, selection and approval of the IA, preparation of the EITI Report and MSG's approval of the report. In addition to this, the MSG considers to explore way to mainstream the EITI. Sub-objective 1.2. on EITI integration into the governmental systems envisages an establishment of the automated data collection and processing system for EITI reporting.

One of the work plan's objectives is to go beyond EITI framework, namely harmonization with the Energy Sector reforms. Activity 6 envisages that the UA-EITI conducts a study demonstrating all contributions, including employment, local procurement, infrastructure development, etc. The work plan notes plans for undertaking a review of the legislative and regulatory framework in the extractive industries in Ukraine; identifying the respective bottlenecks; and developing a roadmap of sectoral reforms.

In addition to this the work plan includes the MSG discussion with regards to expanding the scope of the EITI reporting by implementing the requirement on revenue management and expenditures (5.3), social expenditures by extractive companies (6.1.b), material discretionary or ad hoc subnational transfers (5.2b), beneficial ownership (2.5) and contracts (2.4). It also notes that If stakeholders agree, additional requirements would be included into the EITI Report scope and ToRs for the IA respectably.

*Legal or regulatory obstacles:*

Sub-objective on EITI integration into the governmental systems suggests creating an environment for legislative and regulatory framework aligned with the EITI. The activity also includes holding advocacy events, capacity building workshops, legal and information support, etc. As a consequence, in February 2017 a draft Law on Transparency of Information in the Extractive Industries was submitted to the Parliament for the second time after a failed vote on 21 February 2017.

*Recommendations from Validation and EITI reporting:*

One of the action points under sub-objective on 'Other events in the scope of the EITI implementation in Ukraine' specifies MSG's discussion on implementation of EITI recommendations from the reconciliation. In addition to this, the work plan includes an activity that says that MSG should draft recommendations how to reform the extractive sector based on EITI Report data and submit them to the government (UA-



EITI, 2017f).

#### Costings and funding sources:

The work plan identifies funding sources, amounts required to complete activities and notes additionally where funding is not needed. The main donors are IRF, GIZ, USAID and WB.

Sub-objective 1.2. on EITI integration into the governmental systems envisages an establishment of the automated data collection and processing system for EITI reporting. The work plan has two sub-objectives on implementing the communication strategy and awareness campaign.

### Stakeholder views

All stakeholders consulted expressed satisfaction at the objectives of the UA-EITI work plans.

All MSG members consulted confirmed they had consistently undertaken consultations in developing the annual UA-EITI work plan. MSG members explained that in 2015 GIZ organised a workshop for the MSG to discuss its implementation objectives and develop a comprehensive work plan in line with the EITI Standard. For the next few years the MSG followed that framework, revisiting its objectives in accordance to the progress with implementations. In 2017 the MSG narrowed the range of objectives from five to three. Stakeholder explained that in 2017, the secretariat prepared and circulated a draft work plan, on which members commented and suggested additional activities and amendments. It was also noted that the work plan included activities that required work of all stakeholders, not only the secretariat, and that each constituency was responsible for the certain action points. Still the most active was the civil society group, that was in charge of implementing the communication strategy (includes outreach and dissemination activities).

The national secretariat highlighted that there were delays with the World Bank funding and that other donors tried to cover up some of the implementation expenses. The secretariat stressed an issue of the World Bank's funding and that current grant agreement was coming to an end in 2018. There did not seem to be any further funding commitments from the World Bank's side to support the EITI process in Ukraine.

### Initial assessment

The International Secretariat's initial assessment is that **Ukraine** has made **satisfactory** progress towards meeting this requirement. Ukraine has an updated work plan for 2017, approved the MSG in February 2017. The work plan contains clear objectives aligned with national priorities, as well as activities and actions aimed at ensuring the objectives are met. The work plan includes a broad timeline for achieving the objectives, as well as costings and proposed funding sources. In practice, the work plan is well managed and followed by the national secretariat and MSG members.

Table 1: Summary initial assessment table: MSG oversight

EITI provisions	Summary of main findings	International Secretariat's initial assessment of progress with the EITI provisions (to be completed for 'required' provisions)
Government oversight of the EITI process (#1.1)	There are regular, public statements of support from the government, a senior individual has been appointed to lead on the implementation of the EITI, and senior government officials are represented on the MSG. Despite political instability, the government is actively and effectively engaged in the design, implementation, monitoring and evaluation of the EITI.	Satisfactory progress
Company engagement (#1.2)	Mining, oil and gas companies are actively and effectively engaged in the EITI process, both as providers of information and in the design, implementation, monitoring and evaluation of the EITI process. There are clear legal provisions requiring EITI reporting for all oil and gas companies in Ukraine, that enable the largest extractive taxpayers to report. Reporting from the mining industry remains challenging.	Satisfactory progress
Civil society engagement (#1.3)	There is a strong and vibrant civil society, which is fully, actively and effectively engaged in the EITI process and has contributed significantly to EITI implementation in Ukraine. Since 2009, civil society has fundamentally driven the EITI process, providing high-quality feedback throughout the process; influencing policies and shaping the reform agenda for the government; and effectively utilising the results of the EITI disclosures (ref. assessment of	Beyond



	Requirement 7). Civil society representatives' ability to participate in the EITI process is not restricted or affected by the legal, regulatory, administrative and actual environment.	
MSG governance and functioning (#1.4)	The MSG has been formed and includes self-appointed representatives from each stakeholder group with no suggestion of interference or coercion. The CSO members of the MSG are operationally and in policy terms independent from government and companies. The ToRs for the MSG address the requirements of the EITI Standard and stakeholders renewed it in accordance with the 2016 EITI Standard. Meetings are convened with sufficient advance notice and the MSG members appear to have sufficient time to review documents ahead of meetings. Attendance of the majority of MSG members is consistent.	Satisfactory progress
Work plan (#1.5)	Ukraine has an updated work plan for 2017, approved the MSG in February 2017. The work plan contains clear objectives aligned with national priorities, as well as activities and actions aimed at ensuring the objectives are met. The work plan includes a broad timeline for achieving the objectives, as well as costings and proposed funding sources. In practice, the work plan is well managed and followed by the national secretariat and MSG members.	Satisfactory progress
<p>Secretariat's recommendations:</p> <ol style="list-style-type: none"> <li>1. To further strengthen implementation, the government is encouraged to remove any obstacles that the anti-corruption amendments might imply on the civil society operation.</li> <li>2. To further strengthen implementation, the government is encouraged to institutionalise mandatory reporting for the mining industry in order to avoid reporting challenges in the future.</li> </ol>		

3. To further strengthen implementation, the MSG could consider further entrenching EITI funding in government budgeting.

## Part II – EITI Disclosures

### 2. Award of contracts and licenses

#### 2.1 Overview

This section provides details on the implementation of the EITI requirements related to the legal framework for the extractive sector, licensing activities, contracts, beneficial ownership and state participation.

#### 2.2 Assessment

##### Legal framework (#2.1)

###### Documentation of progress

Legal framework: The 2014-2015 EITI Report contains several sections addressing the legal and fiscal regime governing Ukraine's extractive sector. Pages 120-127, includes a detailed overview of relevant laws and regulations, including how these relate to each other. All the relevant laws, regulations, codes and bylaws are explicitly referenced in the report, including links to the website "Laws of Ukraine" in Ukrainian, managed by the Ukrainian Parliament (Verkhovna Rada of Ukraine, 2017a).

Government agencies' roles: The report lists relevant state agencies, and describes their respective roles. The agencies span from the Ukrainian Parliament (Verkhovna Rada of Ukraine) to state bodies with executive powers even at the local level (pp. 127-128). More detailed information is included in Annex 6, pp. 298-309, which lists roles and responsibilities, as well as the authoritative hierarchy of the various institutions. The annex also lists which laws and regulations that provide the governing framework for each of the state agencies, including regional or local levels of government.

State participation in extractive sector companies is also briefly described, under sections 6.2 and 6.3, but more extensively covered under Chapter 5 (see *State participation* (#2.6)).

Fiscal regime: The fiscal regime is detailed under section 6.4, *Fiscal regime for extractive industries* (pp. 133-146). The report describes the relevant laws and regulations concerning taxes, levies, and fees, effective as of 2014 and 2015, including specific rates when applicable. The section describes which rules apply for extractive sector companies under the various codes and laws in Ukraine.

Apart from the regular fiscal regime, separate provisions are related to Joint Activity Agreements (JAAs) and Production Sharing Agreements (PSAs) (pp. 154-156). The EITI Report explains how taxes a company is liable to pay under the Tax Code are replaced by provisions in PSAs. The report also describes how the fiscal regime applies for companies participating in JAAs, depending on whether the JAA is incorporated. No special provisions are identified regarding companies' payment liabilities under concession contracts.

*Degree of fiscal devolution:* The Budget Code of Ukraine No. 2456-VI 2010 determines the procedures for allocation of tax revenues between state and local budgets<sup>81</sup> (pp. 124, 161-163). Responsibilities for distributing revenues are included, although no allocation-formulas are identified, as well as listing the regional distribution of revenues on pages 111-119. The report does highlight an increasing share of revenues being allocated to lower tiers of government in 2015 relative to 2014 while noting that allocations toward the Autonomous Republic of Crimea were not covered due to the on-going conflict between the Russian Federation and Ukraine regarding control of the region (p. 134).

*Reforms and recommendations:* Several regulatory reforms concerning the extractive sector are described and currently underway in Ukraine (pp. 129-132, and annex 6). The report highlights key reforms that were carried out during the reporting period, concerning the coal, gas and gas transportation sectors.

Recommendations are directed towards improving the EITI reporting process rather than wider sector-reforms. Still these have implications for wider regulations such as clarification of division of roles and responsibilities of agencies, and fiscal devolution. The report references on-going reforms which aim to simplify and streamline existing codes, laws and regulations concerning the mining sector, for example the restructuring of the state's roles in certain companies and reforming the fiscal regime by reducing the number of mineral payment obligations.

In 2016, a law informally dubbed the “5% law” (Verkhovna Rada of Ukraine, 2016) lowered royalty rates imposed on petroleum production and guaranteed regions (oblasts) a larger share of royalties (fees for subsoil use). Considering that this revenue stream accounted for roughly 40% of Ukraine's total revenues in 2015, it represents a substantial change.

The main vehicle for addressing recommendations is the Draft Law #6229 On Information Disclosure in the Extractive Industries. The focus of the draft law is on ensuring compulsory reporting of all companies, as well as provisions covering contract transparency, beneficial ownership, project-level reporting and implementation of fines or sanctions for non-disclosure by companies (UAEITI, 2017, p. 3). This draft law will most likely be dealt with more thoroughly in future EITI Reports.

## Stakeholder views

All stakeholders with views on the legal and fiscal framework agreed that the report provided a comprehensive overview of the sector, as it was at the time of publication. But they also described a multitude of reforms that have taken place since the publication of the 2014-2015 EITI Report.

The Ukrainian context is constantly changing with a multitude of reforms taking place. Stakeholders from all constituencies considered that the information is no longer relevant and does not reflect the *present* legal framework. It does, however, present the current situation when it was published. By way of example, when asked to describe various government agencies' roles, a stakeholder from civil society

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<sup>81</sup> Local budgets in Ukraine refers to the budgets of the Autonomous Republic of Crimea, regional budgets in Ukraine, as well as other budgets for specific territorial communities, villages, towns, and municipalities.

stated that this is possible, but noted “... the description will not be relevant by the end of 2017”.

### Initial assessment

The International Secretariat’s initial assessment is that Ukraine has made satisfactory progress in meeting this requirement. The 2014-2015 Ukraine EITI Report provides all the required information on the legal and fiscal framework in Ukraine in a clear and consistent manner. Stakeholders also confirm the comprehensiveness of this requirement, although noting that the information is not up-to-date due to the speed in which the Ukrainian government is passing reforms.

To further strengthen the timeliness and relevance of the information, MSG and the Ukrainian government are encouraged to explore possibilities to collate and disclose information regarding the legal and fiscal framework of Ukraine online, enabling timelier and more regular updates to reflect the current context in Ukraine’s extractive sector.

## License allocations (#2.2)

### Documentation of progress

Awards/transfers: Information on license auctions held during 2014 and 2015 are listed in the report, and includes information on bidders and winners (pp. 324-330). The list indicates that two auction rounds took place in 2014 and three in 2015. These auctions resulted in three awards in 2014 and 13 new awards in 2015.

According to the report, 41 licenses were issued in 2014 while only 24 were issued in 2015 (p. 79). The individual licenses are not explicitly listed in the EITI Report, but it is possible to re-produce the same results and verify the details by searching the online license registers that are further detailed under License registers (#2.3). However, this only covers certain commodities including oil and gas, iron ore and coal. Information for manganese- nor titanium-related licenses does not appear to be publicly available. The report does not explicitly mention any transfers of licenses, although it states that transfers of licenses is not allowed under Ukrainian law (p. 153).

Awards/transfer process: Sub-soil rights, through licenses, may be awarded through auction/bidding and through alternative procedures. These procedures and criteria are outlined in the 2014-2015 EITI Report (pp.147-153), which does not distinguish between licenses for minerals as opposed to petroleum activities. It is not legal to transfer or sell licenses in Ukraine to an entity other than the license holder (p. 153). The Subsoil Code also stipulates that it is not allowed to use licenses as equity in joint venture contributions or other barter arrangements. The report *does* indicate that the details of a license can be amended, and lists specific requirements needed for amendments to be approved (p. 153).

Regardless of the method used for awarding licenses, GMRU, the State Service for Geology and Mineral Resources of Ukraine, and the relevant company must enter an agreement on subsoil use (p. 153). These agreements are governed by the Law of Ukraine “On Oil and Gas” (Verkhovna Rada of Ukraine, 2011b) (p. 123) and “The Mining Law of Ukraine” (Verkhovna Rada of Ukraine, 1999c) (p. 122).

Technical and financial criteria: Although the report refers to financial, technical and logistical requirements for applicants to licenses, these are not explicitly listed in the report except that the financial criteria are limited to the obligation of paying relevant fees for the licensing process (p. 148). The prices are determined by a specific estimation of different factors described in the report, as well as being listed for each of the auctions held in 2014 and 2015, in annex 11. However, these are not consistently listed for licenses awarded outside the bidding process.

MSG Meeting Minutes from 15 November 2016 also highlight the MSG's discussion of the issue, during which an agreement was reached to highlight the challenge of providing such detailed information for each license, and to include the above-mentioned estimation factors. The IA was also tasked with exploring this issue further, although any other such discussions were not identified in more recent MSG minutes. While the EITI Report does contain language encouraging increased transparency, including the "public disclosure of information on data used to determine the prices for licenses" (p. 160), this was not included in section listing the recommendations of the EITI Report, in chapter 8.

License awardee information: The report describes, for each awardee, information on the blocks for sale, which reserves and commodities the license covers, what type of rights are associated with the various licenses, in addition to the time the licenses are valid for (pp. 324-330). It also refers to the license registry which contains more information on the bidding winner, which is also referenced and available throughout the report.

Non-trivial deviations: In the report the IA clearly states that no significant deviations from statutory procedures were identified, for neither auction nor non-auction license awards (pp.149,153). The report does not provide a methodology for reaching such conclusion, but is possible through information provided in the application registry described under License registers (#2.3), and comparing it to active and non-active licenses.

This was indeed performed for a company which was not listed in the report as a participant or bidder, but nonetheless was awarded a license during Auction I of 18 June 2014 (p.324). The company "Aiger-Trade LLC" does not appear as a list of participants to the bidding process, but is listed as a winner. Research by the International Secretariat then revealed this to be a minor error of omission in the list of participating bidders provided in the EITI Report, with the license application available in the application register, dated 26 June 2013<sup>82</sup>.

Comprehensiveness: We've previously identified 65 licenses awarded in 2014-2015 that were highlighted in the report for oil, gas, iron, and coal (p. 79), and the report does identify the number of licenses awarded for each of the sub-sectors. The report also highlights four PSAs which were active by the end of 2015 (p. 155), but by the time of this assessment these are no longer active.

As we replicated the search, the license registry (Geoinform of Ukraine SRPE, 2017) confirms the number

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<sup>82</sup> [http://geoappl.kiev.ua:8888/reports/rwervlet?us&report=zlperelic&kerpoy=36089497&stan\\_r1=20&stan\\_r2=10&stan\\_r3=30](http://geoappl.kiev.ua:8888/reports/rwervlet?us&report=zlperelic&kerpoy=36089497&stan_r1=20&stan_r2=10&stan_r3=30)

of licenses awarded. Ten of these permits were awarded through auctions listed in the report, contradicting the claim in the EITI Report (p.148) that licences are “... usually awarded through an auction (bidding).” If correct, this means that 55 licenses were awarded at the discretion of GMRU together with the regional executive bodies of the Ukrainian government, and subject to approval by the Cabinet of Ministers in the Ukraine. According to certain stakeholders (see stakeholder views below), this is quite common if the applicants have performed appraisals of mineral reserves at their own expense.

Bidding process: For auctions, the report covers the precise steps involved, both by government and applicants (p. 149-151). The report also lists company names for all participants in the bidding process. Licenses awarded without the use of auction/bidding, must fulfil several criteria which are clearly defined by a Resolution of the Cabinet of Ministers of the Ukraine (Verkhovna Rada of Ukraine, 2011a) (pp. 151-152). The report highlights that certain licenses were awarded based on the expert opinion of the Interagency Commission on Subsoil Use (p. 142), including the criteria for such awards. However, it seems most licenses awarded during 2014-2015 were awarded outside a bidding process according to our own search. Other non-auction procedures include entering production sharing agreements (PSA) with the Ukrainian government, which is governed by the “PSA Law” (Verkhovna Rada of Ukraine, 1999c). The procedures for winning a PSA-tender are stipulated in the law, and is briefly described in the EITI Report (p. 155).

Commentary on efficiency: The 2014-2015 EITI Report does not explicitly comment on the efficiency of the current procedures for awarding licenses in any of the sub-sectors. However, as will be identified under *License registers (#2.3)*, the two registries covering both licenses and license applications, can together be used for assessing the effectiveness of the procedures.

### Stakeholder views

Publicly accessible information on license allocations and procedures in Ukraine is viewed as both comprehensive and reliable by stakeholders from all three constituencies, though it also suffers from the challenges that accompany a fast-changing environment. The MSG’s trust in the reliability of the process was apparent when confronted with the winning bid of Aiger-Trade LLC, although the company was not listed as a bidder for the auction on 18 June 2014. The immediate reaction of all constituencies on the MSG was that it is more likely to be a typing mistake or minor error in the EITI Report (which it indeed proved to be), rather than a breach in procedures. This was later confirmed by the International Secretariat.

Stakeholders also commented on the efficiency of current procedures for awarding licenses. Several company-representatives indicated that the allocation process is highly inefficient even though the information in the EITI Report is viewed as comprehensive and reliable. The main source of malcontent was directed towards the agency responsible for issuing licenses; the State Service for Geology and Mineral Resources of Ukraine (GMRU). The claim is that since 2014 there have been at least two to three regulatory or procedural changes each year, which creates confusion and difficulties of compliance. This was also confirmed by the government constituency. A government representative also claimed that after subsoil use-permits are awarded, it often takes an additional three years to obtain *land use rights* after receiving the subsoil use permits. Still, the IA noted that the MSG did not request an assessment of licensing procedures’ efficiency.



Although companies are not satisfied with a constant change in procedures, they did highlight a welcoming development; that although there have not been held auctions the last two years state-owned enterprises can no longer circumvent the auction procedures. According to representatives this was a common practice under a prior license allocation-framework.

### Initial assessment

The International Secretariat's initial assessment is that Ukraine has made satisfactory progress towards meeting this requirement. The report covers all the significant aspects of the requirement, disclosing the relevant procedures and practices for allocating licenses or extractive rights in Ukraine. The IA clearly states that no significant deviations from existing procedures were identified, although not providing a clear description of how this conclusion was reached. The 2014-2015 EITI Report itself covers most of the information and where information is missing in the report, references and links are provided. These references can also be used for companies and sectors outside the scope of the report.

Still, in accordance with requirement 2.2.a, the government should ensure annual disclosure of the technical and financial requirements for licenses awarded and any non-trivial deviations from the applicable legal and regulatory framework governing license awards and transfers.

To provide more relevant and concrete recommendations for how to improve Ukraine's licensing system, it is also recommended that the MSG considers performing additional analyses concerning the efficiency and effectiveness of the existing procedures for allocating extraction and prospecting rights in Ukraine.

## License registers (#2.3)

### Documentation of progress

Licenses held by material companies: Ukraine's EITI Report does not contain a list of licenses held by material companies, but provides reference (links) to an online public register of all special subsoil permits issued by GMRU, first published in March 2015 (p. 147). The public registry of licenses, Geoinform of Ukraine State-owned Research and Production Enterprise (Geoinform of Ukraine SRPE, 2017), contains detailed information regarding all permits and rights issued in Ukraine, for both companies included in the scope of the EITI Report, and those outside the scope of the report.

License-holder names: The registry contains, for each license, license holder names as well as identification codes (EDRPOU) associated with the legal entity or individual, its address, and the authority responsible for awarding the license (p. 147).

Licenses coordinates: The EITI Report does not contain information regarding license coordinates, but this information is included public register (ibid.). This was confirmed by a simple search in the license registry. On the same website, it is also possible to access an interactive map which includes the visual delineation of the license coordinates, while serving as an alternative route to access license-information.

Dates: Although not explicitly covered in the EITI Report, the report cites the contents of the public registry of licenses. The report identifies that dates of issue and expiry are included for each license

entry (p. 147). The date of application to a license is not contained within the specific registry, but rather in a parallel registry exclusively for license-applications. This is also highlighted in the EITI Report (p. 147). The MSG discussed and reached the same conclusion after a pre-Validation workshop, as evident from MSG Meeting minutes of 29 May 2017.

Commodity: Each license is associated with specific commodities and outlines which form of subsoil use is permitted (p. 147). The registry also contains information regarding the subsoil area, including the estimated reserves as of the date of issue. If any other provisions are applicable for the specific license, these are also identified in the registry entries.

Licenses held by non-material companies: The comprehensiveness of the registry is not discussed in the report and it is difficult to ascertain whether the registry includes entries for *all* non-material companies, as the information is not accessible in open formats. The EITI Report does not explicitly include information regarding the coverage of licenses held by non-material companies, although several are available through the public registry.

Public cadastre/register: The report describes the registry, including information regarding how many licenses are contained within the registry. The registry, which is updated monthly (p. 147), is searchable using several different data points as variables.<sup>83</sup>

As previously explained the report identifies one point of information required under EITI Requirement 2.3.b, which is not covered by the registry; the date of application for each license or the date of the auction associated with the license (p. 147). However, the site also includes a separate registry specifically for license applications, including all information required by the EITI Standard and more. In addition to both the license-registry and registry for applications the site includes spatial feature with different interactive maps<sup>84</sup>. These features are also interlinked with the license registry providing multiple approaches to data accessibility.

## Stakeholder views

All stakeholders agree that the license registry is extremely useful, detailed, regularly updated and reliable. When brought up during a meeting with the MSG, representatives from each constituency showed a good understanding of the registry, although they admitted that scrutiny of companies and licenses referenced in the 2014-2015 EITI Report were performed in less detail than in the report covering 2013. The MSG also claimed that all issues identified in relation to permits or the license registry were scrutinised at MSG-meetings. This could not be confirmed through Meeting minutes of the MSG.

The only specific challenge was identified by the Independent Administrator. They noted difficulties in retrieving and using the information submitted by the responsible agency; the GMRU. They highlighted delays in submissions as well as submissions in non-open formats (i.e. pdf-files and similar) as the main

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<sup>83</sup> Including license type, deposit type or area, commodity, region, application type, license registry number, EDRPOU code, license approval year, license expiration year and license status (valid, invalid, or suspended).

<sup>84</sup> See <http://geoinf.kiev.ua/wp/interaktyvni-karty-spetsdozvoliv.htm> or <http://geoinf.kiev.ua/wp/kartograma.htm>.

obstacles of ensuring additional in-depth analysis as encouraged under EITI Requirement 7.1.e.

No other comments were identified towards this requirement.

### Initial assessment

The International Secretariat's initial assessment is that Ukraine has made satisfactory progress towards meeting this requirement. The Ukrainian online and publicly available license registry, Geoinform, is maintained and regularly updated. It contains all necessary information on license holders, coordinates, and the relevant dates of the licences; date of application, dates of duration, and information regarding which commodities the special permits pertain to.

The MSG and Government of Ukraine are encouraged to explore possibilities for providing license registry information in open data formats, such as CSV<sup>85</sup> or Microsoft Excel, to improve data accessibility and to simplify data collection related to EITI reporting.

## Contract disclosures (#2.4)

### Documentation of progress

Government policy: As mentioned under *Legal framework (#2.1)*, contract transparency is covered in a *Draft Law of Ukraine #6229 On disclosure of information in extractive industries*. The UAEITI's Annual Progress Report (APR) includes several sections presenting the activities of the MSG and national secretariat advocating for contract transparency in Ukraine (UAEITI, 2017, pp. 3-4). The 2014-2015 EITI Report states that laws on subsoil use agreements do not require the disclosures of contracts nor its parts (p. 155), and the same is iterated for PSAs (p. 155), JAAs (pp. 157) and concession-contracts (pp. 158). In addition to this, a supplementary document to the 2014-2015 EITI Report, highlights the government's policy towards contract disclosures in general; identifying that the government does not have an explicit policy (Ernst & Young, n.d.). It, therefore, reflects that the EITI Report only covers disclosure requirements towards the different forms of legal agreements in use in Ukraine (ibid., p. 2). The clarification was not published on UAEITI's website until October 2017 due to a minor procedural error, but was submitted to the International Secretariat ahead of the deadline for documentation submission.

Actual practice: Section 6.5.4 of Ukraine's EITI Report 2014-2015 does include a description of the different contractual arrangements used in Ukraine. Regular subsoil use agreements are based on framework or model agreements, accessible through GMRU's official website (GMRU, 2017a). The model agreements contain provisions on technical, technological, organizational, financial, economic, social, and environmental obligations of the parties as well as the procedures governing the relationship between the government and rights-holders (pp. 154-155).

Essential terms and conditions of PSAs are listed (pp. 155-156 & annex 8), as well as for JAAs and concession contracts (pp. 156-159 & annex 9). Otherwise, Ukrainian law does not require nor enable

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<sup>85</sup> Comma Separated Value file

disclosures of such agreements (pp. 155-158). Again, Ukraine does not practice disclosure of individual contracts, however framework/model agreements and their general terms are accessible to the public. Page 155-156 includes a list covering four PSAs that were active during the time-period, including dates of signing. One of these PSAs were terminated in 2014 and is, therefore, no longer active.

Accessibility: The EITI Report states that there are no requirements for specific agreements to be publicly accessible (p. 155, 157, 158). However, PSAs are based on model agreements and its essential terms and concepts are outlined in annex 8 of the report. The same is true for concession contracts – essentially Public-Private Partnerships (PPP-arrangements) for specific activities works or services – outlined in annex 9 of the report.

Although the government does not have a policy on publishing concession contracts, the agreements managed by the State Property Fund of Ukraine (SPFU) are listed on their websites (State Property Fund of Ukraine, 2005a). The EITI Report has drawn on this information to produce a list of effective agreements for the coal industry (p. 158).

Further to the above, the EITI Report does not identify any contracts to be publicly accessible either in its entirety, nor in parts. However, upon exploring Resource Contracts.org two amendments of a Joint Venture Agreement are accessible. The amendments are for Bugruvativsk Field between Ukrnafta PJSC, IPEC Closed Joint Stock Company and Lateral Vector Resources Inc. (Resource Contracts, 2002). The origin of the document is still unclear, but it may imply that some contracts governing activities in Ukraine are available.

### Stakeholder views

No reservations were identified among stakeholders. However, a government representative indicated that the prevailing understanding of companies and government agencies is that, unless explicitly required, disclosures of contracts are not allowed under Ukrainian law. Several stakeholders emphasised the inclusion of contract transparency in the Draft Law of Ukraine #6229 On disclosure of information in extractive industries, which all stakeholders support. The draft law is expected to go to the parliament (Verkhovna Rada of Ukraine), before the end of 2017.

From MSG Meeting minutes of 6 September 2016, it is highlighted that stakeholders do not consider Joint Activity Agreements (JAAs) as contracts in the oil and gas industry, as it does not award any of the participants with any rights of extraction or exploration. Still, the MSG decided to include the lack of disclosure practices in the EITI Report, which MSG-members maintain is not accessible due to confidentiality provisions of the agreements themselves. This claim is not possible to verify.

Lastly, it is clear that there are significant efforts towards making contract disclosures a reality, through the *Draft Law of Ukraine #6229 On disclosure of information in extractive industries*, although the results of these efforts remain to materialise.

### Initial assessment

The International Secretariat's initial assessment is that Ukraine has made satisfactory progress towards meeting this requirement. The 2014-2015 EITI Report and supplementary comments provided by the

Independent Administrator clarify that there is no single government policy on contract disclosures, and no requirements to disclose contracts exist in laws governing the legal agreements used in Ukraine. The EITI Report outlines terms and conditions of contracts, especially for model agreements (both JAAs and PSAs). The MSG and national secretariat have made significant efforts in promoting contract disclosure through the draft law.

In order to strengthen implementation, UA-EITI is recommended to outline the government's policy on contract transparency and its actual practice future EITI Reports. The MSG and Government are encouraged to continue its efforts towards ensuring contracts are disclosed as is recommended under Requirement 2.4.

## Beneficial ownership disclosure (#2.5)

### Documentation of progress

Government policy: The EITI Report clearly describes that all legal entities and incorporated bodies in Ukraine are required to provide information on beneficial ownership (pp.153-154). In 2014, as one of five anti-corruption measures brought to the parliament, Ukraine passed a law requiring upfront disclosure of beneficial ownership of companies to Ukrainian authorities (Verkhovna Rada of Ukraine, 2014a). All companies registered in Ukraine are, therefore, required to disclose their ultimate beneficiaries to the Ministry of Justice of Ukraine, which oversees the publicly accessible beneficial ownership register (Ministry of Justice of Ukraine, 2017). During Spring 2017 Ukraine was also the first country to officially become part of the Global Beneficial Ownership Register launched by Open Ownership (2017). Beneficial ownership also holds a prominent position in Ukraine's APR (UAEITI, 2017), which identifies several accomplishments within beneficial ownership but also areas of improvement.

The ToRs for the IA tasked Ernst and Young to provide *"Information requested by the MSG on beneficial ownership in oil and gas (oil and gas production and transportation) and mining sectors in 2016 in accordance with EITI Requirement 2.5"* (UAEITI, 2016a, p. 8). The ToRs goes on to assert that the relevant information and source of information will be shared with the IA, subsequent to a discussion and agreement of the MSG. However, we have not been able to document any such discussions or exchange of information in MSG meeting minutes.

The EITI Report does not document the MSG's discussion on disclosure of beneficial ownership. UAEITI's Beneficial Ownership Roadmap (UAEITI, 2016b) presents the relevant laws and regulations for the government's policy on beneficial ownership disclosures alongside a precise definition of ultimate beneficial owners (ibid. p.2). This is also followed by precise actions with the aim to review and improve upon the existing legislation and registry, including gap analyses and capacity building efforts aimed at the government agency managing the registry.

Actual practice: The 2014-2015 EITI Report comments on Ukraine's efforts in disclosing beneficial owners, noting that 66 of the 120 extractive companies covered by the EITI Report have disclosed their beneficial owners in the public register at the Ministry of Justice as of 21 October 2016 (pp. 310-316). This is reflected in the EITI Report by stating that *"the publicly available information about the ultimate beneficial owners is not always complete"* (UAEITI, 2017b, p. 154). Still, for multiple companies this

information is now accessible, and the EITI Report provides the names of ultimate beneficial owners for each material company when available in Annex 7 (pp. 310-316). In terms of legal ownership of material companies, as well as the corporate structure leading to beneficial ownership, the EITI Report identifies that the registrar requires the submission of such information, but they are not obliged to make such information public (p. 154).

In addition, there is a separate registry concerning joint stock companies (JSC). Ownership information is accessible through the registry on the website of the Agency for Development of Stock Market Infrastructure of Ukraine (2017) for owners holding 10 per cent or more of a JSC. This registry includes a wider array of information, including ownership information, annual and quarterly financial information. These are available in both pdf and (open) XML formats.

According to MSG meeting minutes from 15 November 2016 (UAEITI, 2016f), the aim for the roadmap also included the acknowledgement that Ukraine's legislation covers "almost all" of EITI Requirements. Therefore, it was argued that Ukraine shift their focus toward improving on the existing systems and regulations concerning beneficial ownership disclosure. The roadmap includes a list of the information required under Ukrainian legislation, and upon review the roadmap does cover all the recommended information as stipulated in the EITI Standard.

Legal owners of material companies: Annex 7 covers summary information of the Unified State Registry as of October 2016 (pp. 310-316). It also identifies that beneficial ownership disclosures of the registry only cover private companies, while excludes state and communal enterprises. BO information does not exist for SOEs in this registry, and the annex indicates this by proclaiming that there is "No information available on USR [Unified State Registry]". However, upon examining SOEs contained in the registry for this initial assessment, it did indicate which government ministry is responsible for managing various SOEs<sup>86</sup>.

## Stakeholder views

Stakeholders of the MSG did not express any concrete concerns nor comments towards beneficial ownership disclosures. Upon consultation with civil society not directly linked to EITI implementation, preliminary results of their analysis suggest that beneficial ownership information for subsoil rights holders are comprehensive and reliable, apart from disclosures leading to offshore tax havens. A rough estimate was given of 70 to 80 per cent of extractive companies are disclosing their real beneficial owners.

According to civil society, the main issue concerning the registry is that the information is not available in open formats. It is therefore difficult to use for larger analyses and to link with information from other databases and registries. It was also pointed out that the lack of access to agreements such as Joint Activity Agreements (JAAs) hinders a complete understanding of beneficiaries of extractive sector projects.

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<sup>86</sup> By way of example, the owner of both Artmuvuhillia State Enterprise (EDRPOU 32270533) and Lysychanskvuhillia PJSC (32359108) was identified as the Ministry of Energy and Coal Industry

## Initial assessment

Implementing countries are not yet required to address beneficial ownership and progress with this requirement, however, in the Secretariat's view, Ukraine has also gone beyond this requirement by creating a publicly accessible register of beneficial owners as encouraged by the EITI Standard.

Ukraine EITI should be commended for being in the forefront of beneficial ownership disclosures and precise requirements of such disclosures. Based on the information of the 2014-2015 EITI Report and analyses performed by stakeholders both on and outside the MSG, we conclude that the information contained in the BO registry (Unified State Registry) is up to date, comprehensive, and reliable.

To strengthen implementation and prepare for full disclosure of beneficial ownership information by 2020, it is recommended that Ukraine EITI considers conducting broader outreach to the companies on the objectives of beneficial ownership transparency, as well as to hold conversations with government agencies on how to make such information accessible in open data formats.

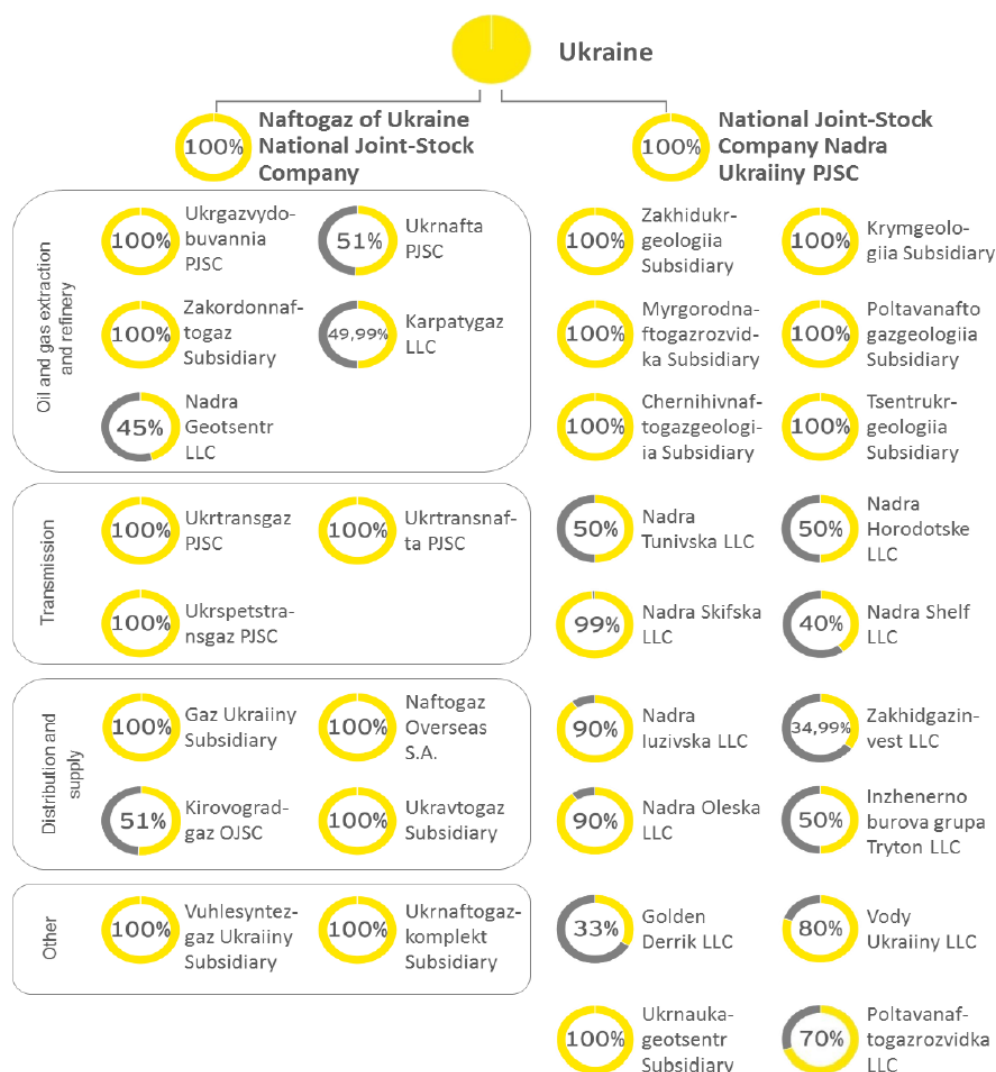
## State participation (#2.6)

### Documentation of progress

Materiality: Section 5.11 of Ukraine's EITI Report covers the role of the state in the extractive sector, by each sub-sector (pp. 103-111). No definition of state participation is included in the report, however MSG meeting minutes for 29 May 2017 highlights that the MSG did discuss a definition equivalent to the EITI Standard (UAEITI, 2017d, p. 3). No other reference to a definition of state-owned enterprise was located nor are percentages of government shares disclosed, except for the oil and gas sector. For oil and gas, the report discloses the names of several companies alongside the state's share in ownership (p. 105 and Figure 3 below).



Figure 3: Government of Ukraine's participation in the petroleum sector



Source: EITI National Report of Ukraine 2014-2015, page 105 (UAEITI, 2017b)

**Financial relationship with government:** The EITI Report does not describe *general* statutory rules governing the financial relationship between state-owned enterprises and central government, and does not identify additional payments beyond those levied on private companies. The only exception is dividends. There are also some sub-sector specific financial relationships within coal and iron sectors, briefly described below.

The report identifies the relevant resolutions governing the financial relationship of coal companies and the government, and notes there are specific tax benefits for this sub-sector (p. 104). For the only iron SOE, Dyrektsiya Kryvorizkogo GZK State Enterprise (KGZKOR), it falls under the authority of the Ministry of Economic Development and Trade which also allocate funds towards rehabilitation of the mine (p. 106).

In a supplementary document by the IA, they explain that all transfers between SOEs and the state, are governed by approved budget programs and state budget laws. SOEs must pay a share of their net

income (dividends or income from property and business activity), which are defined by the Law of State Property Management (Verkhovna Rada of Ukraine, 2006) and several regulations. These state that the statutory “norm” is for 30% of net profits to be transferred to government. In practice, these rates are set by the CMU through SOE budget approval processes and vary each year. E.g. in 2014 dividends were often set as 50% of net profits, while in 2015 this was increased to 75%. The note also states that these rates differ between SOEs in addition to some non-specific liabilities of petroleum companies (Ernst & Young, n.d.). It does not explicitly identify SOEs’ ability to contract third-party funding, but implicitly this would also be part of the budget approval process of the CMU. For more information regarding SOE’s financial relationship with government agencies, also see *Transactions between SOEs and government* (#4.5).

Government ownership: In the coal sector, the national statistics office estimated that SOEs employed 51 000 people by 1 January 2016 (p. 103), approximately half of the sub-sector in its entirety. The main SOEs in Ukraine’s coal sector are listed on page 103, but the report does not provide a comprehensive list nor expand on the specific level of ownership of SOEs or changes thereof. The report also does not describe the terms associated with state equity in each of these SOEs.

The government also participates through several companies in the petroleum sector, and the report lists Naftogaz of Ukraine, Ukgazvydobuvannya, Ukrnafta, Ukrtransgaz, and Ukrtransnafta as examples. These companies are identified as the largest companies within Ukraine’s petroleum sector, and page 105 of the report includes ownership shares of GoU for several companies, in particular via Naftogaz and the national joint-stock company Nadra Ukrainy PJSC and their subsidiaries (see Figure 3 above).

In the iron sub-sector the GoU is represented by one extractive company, Dyrektsiya Kryvorizkogo GZK State Enterprise (KGZKOR). The report does not expand on the relationships or ownership of KGZKOR beyond the descriptions for all other extractives SOEs. For the titanium industry, the GoU is represented through the company United Mining and Chemical Company State Enterprise (UMCC SE). After two lease agreements expired in 2014, UMCC SE assumed the role as an operator, and pending a corporate governance reform of the UMCC SE. The report highlights that UMCC will further be transformed into a joint stock company and eventually privatised (p. 106).

Ownership changes: Beyond the information described above, the EITI Report does not explicitly identify any changes in ownership.

Loans and guarantees: Section 5.11.5 addresses government guaranteed loans to extractive companies (pp. 106-110). According to the report (p.106), only one new credit agreement was secured by state guarantees during the reporting period. The EITI Report describes a state guarantee for the liabilities of Naftogaz, the Ukrainian SOE, for a loan of USD 300 million. The report provides information regarding which bank provided the loan, which resolutions approved the use of the state guarantee (Verkhovna Rada of Ukraine, 2015b and 2015c), including the terms of the loan agreement. This included some provisions of the guarantee and loan itself, including payment dates (in 2016 and 2017), with references to the state budget. However, the report does not include information on interest rates (p. 107).

According to Naftogaz’ Annual Report 2015 (National Joint Stock Company "Naftogaz of Ukraine", 2016, p. 229), the loan guarantees of the Ukrainian government is listed on page 229, but differs significantly. The guarantees identified in the EITI Report is for the amount UAH 7.16 billion, or USD 300 million, almost 32

times higher than identified in Naftogaz' 2015 Annual Report, at UAH 20.54 million. When confronted, the IA noted that the USD 300 million loan from EBRD was mentioned several times in Naftogaz' Annual Report 2015, (pp. 30, 41, 182 and 243). However, the EITI Report and IA failed to comment on the loan being a revolving credit line which can fluctuate freely during the loan agreement period, and that the total liabilities of Naftogaz to EBRD was reported as UAH 20.54 million by the end of 2015. The EITI Report also does not identify some seeming contradictions of Naftogaz' report, which also states on pages 41 and 182 that they used approximately USD 48.7 million of the EBRD loan in 2015, equivalent to roughly UAH 1.1 billion, rather than the otherwise reported UAH 20.54 million.

In addition to the guarantee, the report lists payments for non-performing loans with state guarantee-agreements in the time-period. The payments relate to a guarantee-agreement for Lysychanskvuhillia PJSC's (EDRPOU 32359108) loans with the China Development Bank from 2011. Pages 109-110 shows that liabilities of Lysychanskvuhillia towards the government increased by 309% – from just about USD 6 million to almost USD 25 million during the reporting period. However, the section only presents tables including payments made by Lysychanskvuhillia in 2014 and 2015 (p. 108), with minimal explanation of the payments and liabilities presented outside the tables on pages 108-110.

### Stakeholder views

The EITI Report lists several companies are listed which are owned or controlled by the GoU. There was consensus on the MSG that the comprehensiveness of information on state participation in the EITI Report was unclear, with several members noting the ambiguity and gaps in some information provided in the EITI Report. The consultations also proved that there was no unified understanding of state participation in the mineral and petroleum sectors, as several representatives provided similar but diverging explanations.

Government representatives explained that there were no additional privileges or payments of SOEs, but that lower rates were applied when calculating tax liabilities. All SOEs report to the Ministry of Finance and SFS, although Naftogaz reports on behalf of itself and all subsidiaries to the Ministry of Economic Development and Trade (MEDTF).

SOEs were described by civil society and government to retain a pre-set share of profits, usually a 50-50 split, while transferring the rest to government as dividends. However, the precise recipient was often identified as Ministry of Finance rather than the Ministries responsible for managing the SOEs. It was also claimed that for other asset-transfers to occur, an order has to be issued by the responsible ministry.

Subsidiaries of Naftogaz confirmed their financial reporting is included in Naftogaz' consolidated annual reports. They also stressed operations of SOEs are strictly regulated, according to government-approved plans and strategies. This was deemed especially relevant for the oil and gas sector, including transit/transport. The representatives also commented on the large changes happening in Ukraine, in terms of state participation. Ukrtransgaz, and the coming 'unbundling' of the SOE was often mentioned, as privatisation of the company is expected in the coming months and years. Civil society representatives also highlighted this challenge of constant changes in laws and regulations, as several SOEs were identified as undergoing privatisation and restructuring.

The IA noted that they could find no evidence of changes in ownership or government activities, which was confirmed through a spot-check of Naftogaz' Annual Report for 2015 (National Joint Stock Company "Naftogaz of Ukraine", 2016). It was noted that some changes may have occurred due to the situation in Eastern Ukraine, but that UAEITI is exempt from providing information for these territories through the EITI Board-approved request for adapted implementation (EITI, 2016) with respect to coverage of extractive industries in the Donetsk and Luhansk oblasts and in Crimea.

On state guarantees and privileges, civil society representatives claimed that there may be more state guarantees than what is apparent in SOE financial statements, as there are 'implicit' guarantees by lower-than-market interest rates on loans and similar arrangements. Some SOEs were also specifically identified as accruing significant outstanding tax liabilities that are not repaid. The representatives also confirmed the budget support and missing information regarding specific recipients, but noted this should be available through state budget accounts.

When asked about additional information regarding Lysychanskvuhillia PJSC, none of the stakeholders had concrete comments, other than some civil society-representatives noting that they could not recall any discussion on the company during MSG meetings. One representative noted this is not an uncommon phenomenon in Ukraine, that SOEs have been awarded state guarantees for procurement of heavy machinery and equipment while the project becomes unprofitable. Payment liabilities then continue to rise.

### Initial assessment

The International Secretariat's initial assessment is that Ukraine has made inadequate progress in meeting this requirement. The EITI Report includes which state-owned companies are part of the scope of the report, however, we have not been able to assess the comprehensiveness of the information, particularly in terms of government shares in each SOE. The report does not contain general information regarding rules between SOEs and central government. It does present limited information regarding sector-specific rules for financial relationships, including the practices associated with these. This includes contributions toward SOEs from the state budget for coal and iron sectors, and includes third-party financing of Naftogaz' operations. As Naftogaz' annual reports form the basis for most gas SOEs included in the report, this reinforces the recommendations made under *Legal framework (#2.1)* that there is a need for Ukraine EITI to document developments in the sector more regularly, e.g. through online reporting.

The report does not provide specific comments towards assessing the comprehensiveness of government ownership. This is exacerbated by the lack of information regarding the regions which are affected by the EITI Board-approved Adapted implementation request, especially in identifying where potential or actual gaps exist. Terms attached to government equity stake in certain companies are not provided for in the EITI Report, for SOEs in which the government holds less than 100% share; SOEs, subsidiaries, joint ventures, nor joint activity agreements. While the report does not indicate whether there have been changes in state ownership of SOEs, this has been assessed to be correct. The EITI Report does list two loan guarantees, but no state loans to SOEs, specific details of transactions are lacking or not explained.

In accordance with requirement 2.6.a, the MSG should provide a comprehensive overview of state-owned enterprises, including an explanation of the prevailing rules and practices related to SOEs' retained

earnings, reinvestment and third-party funding. The government should also ensure annual disclosure of any changes in government ownership in SOEs or their subsidiaries, and provide a comprehensive account of any loans or loan guarantees extended by the state or SOEs to mining, oil, and gas companies in line with requirement 2.6.b.

Table 2: Summary initial assessment table: Award of contracts and licenses

EITI provisions	Summary of main findings	International Secretariat's initial assessment of progress with the EITI provisions (to be completed for 'required' provisions)
Legal framework (#2.1)	The 2014-2015 Ukraine EITI Report provides all the required information on the legal and fiscal framework in Ukraine in a clear and consistent manner. Stakeholders also confirm the comprehensiveness of this requirement, although noting that the information is not up-to-date due to the speed in which the Ukrainian government is passing reforms.	Satisfactory progress
License allocations (#2.2)	The report covers all the significant aspects of the requirement, disclosing the relevant procedures and practices for allocating licenses or extractive rights in Ukraine. The IA clearly states that no significant deviations from existing procedures were identified, although not providing a clear description of how this conclusion was reached. The 2014-2015 EITI Report itself covers most of the information and where information is missing in the report, references and links are provided. These references can also be used for companies and sectors outside the scope of the report.	Satisfactory progress
License registers (#2.3)	The Ukrainian online and publicly available license registry, Geoinform, is maintained and regularly updated. It contains all necessary information on license holders, coordinates, and the relevant dates of the licences; date of application, dates of duration, and information regarding which commodities the special permits	Satisfactory progress

EITI provisions	Summary of main findings	International Secretariat's initial assessment of progress with the EITI provisions (to be completed for 'required' provisions)
	pertain to.	
Contract disclosures (#2.4)	The 2014-2015 EITI Report and supplementary comments provided by the Independent Administrator clarify that there is no single government policy on contract disclosures, and no requirements to disclose contracts exist in laws governing the legal agreements used in Ukraine. The EITI Report outlines terms and conditions of contracts, especially for model agreements (both JAAs and PSAs). The MSG and national secretariat have made significant efforts in promoting contract disclosure through the draft law.	Satisfactory progress
Beneficial ownership disclosure (#2.5)	Implementing countries are not yet required to address beneficial ownership and progress with this requirement, however, in the Secretariat's view, Ukraine has also gone beyond this requirement by creating a publicly accessible register of beneficial owners as encouraged by the EITI Standard.  Ukraine EITI should be commended for being in the forefront of beneficial ownership disclosures and precise requirements of such disclosures. Based on the information of the 2014-2015 EITI Report and analyses performed by stakeholders both on and outside the MSG, we conclude that the information contained in the BO registry (Unified State Registry) is up to date, comprehensive, and reliable.	Beyond
State-participation (#2.6)	The EITI Report includes which state-owned companies are part of	Inadequate progress



EITI provisions	Summary of main findings	International Secretariat's initial assessment of progress with the EITI provisions (to be completed for 'required' provisions)
	<p>the scope of the report, however, we have not been able to assess the comprehensiveness of the information, particularly in terms of government shares in each SOE. The report does not contain general information regarding rules between SOEs and central government. It does present limited information regarding sector-specific rules for financial relationships, including the practices associated with these. This includes contributions toward SOEs from the state budget for coal and iron sectors, and includes third-party financing of Naftogaz' operations. As Naftogaz' annual reports form the basis for most gas SOEs included in the report, this reinforces the recommendations made under <i>Legal framework (#2.1)</i> that there is a need for Ukraine EITI to document developments in the sector more regularly, e.g. through online reporting.</p> <p>The report does not provide specific comments towards assessing the comprehensiveness of government ownership. This is exacerbated by the lack of information regarding the regions which are affected by the EITI Board-approved Adapted implementation request, especially in identifying where potential or actual gaps exist. Terms attached to government equity stake in certain companies are not provided for in the EITI Report, for SOEs in which</p>	

EITI provisions	Summary of main findings	International Secretariat's initial assessment of progress with the EITI provisions (to be completed for 'required' provisions)
	the government holds less than 100% share; SOEs, subsidiaries, joint ventures, nor joint activity agreements. While the report does not indicate whether there have been changes in state ownership of SOEs, this has been assessed to be correct. The EITI Report does list two loan guarantees, but no state loans to SOEs, specific details of transactions are lacking or not explained.	
<p>Secretariat's recommendations:</p> <ol style="list-style-type: none"> <li>1. To further strengthen the timeliness and relevance of the information, MSG and the Ukrainian government are encouraged to explore possibilities to collate and disclose information regarding the legal and fiscal framework of Ukraine online, enabling timelier and more regular updates to reflect the current context in Ukraine's extractive sector.</li> <li>2. In accordance with requirement 2.2.a, the government should ensure annual disclosure of the technical and financial requirements for licenses awarded and any non-trivial deviations from the applicable legal and regulatory framework governing license awards and transfers.</li> <li>3. To provide more relevant and concrete recommendations for how to improve Ukraine's licensing system, it is also recommended that the MSG considers performing additional analyses concerning the efficiency and effectiveness of the existing procedures for allocating extraction and prospecting rights in Ukraine.</li> <li>4. The MSG and Government of Ukraine are encouraged to explore possibilities for providing license registry information in open data formats, such as CSV or Microsoft Excel, to improve data accessibility and to simplify data collection related to EITI reporting.</li> <li>5. The MSG is recommended to explore further the government's policy on contract transparency and document the findings in future EITI Reports. The MSG and Government is encouraged to continue its efforts towards ensuring contracts are disclosed as is recommended under Requirement 2.4.</li> <li>6. To strengthen implementation and prepare for full disclosure of beneficial ownership information by 2020, it is recommended that Ukraine EITI considers conducting broader outreach to the companies on the objectives of beneficial ownership transparency, as well as to hold conversations with government agencies on how to make such information accessible in open data formats. The MSG is also encouraged to ensure progress in implementing the beneficial ownership roadmap is documented in EITI Reports. The MSG and GoU are encouraged to explore opportunities for increased data accessibility; that beneficial ownership information is made available in open formats.</li> </ol>		

EITI provisions	Summary of main findings	International Secretariat's initial assessment of progress with the EITI provisions (to be completed for 'required' provisions)
	7. In accordance with requirement 2.6.a, the MSG should provide a comprehensive overview of state-owned enterprises, including an explanation of the prevailing rules and practices related to SOEs' retained earnings, reinvestment and third-party funding. The government should also ensure annual disclosure of any changes in government ownership in SOEs or their subsidiaries, and provide a comprehensive account of any loans or loan guarantees extended by the state or SOEs to mining, oil, and gas companies in line with requirement 2.6.b.	

### 3. Monitoring and production

#### 3.1 Overview

This section provides details on the implementation of the EITI requirements related to exploration, production and exports.

#### 3.2 Assessment

#### Overview of the extractive sector, including exploration activities (#3.1)

##### Documentation of progress

**Exploration:** Section 5.1 introduces the sub-sectors that are important for the Ukrainian extractive industries (pp. 24-26). In addition, chapter 5 includes separate sections for each of the relevant sub-sectors: oil and gas (pp. 34-46), coal (pp. 26-33), iron ore (pp. 47-57), titanium (pp. 57-62) and manganese (pp. 62-69). Each of the sections cover a general overview of the sectors, including regional locations of main deposits, a general overview of the industry structure, and a description of the main companies operating in the country.

The sub-sections also identify exploration activities and operations in general terms under section 5.9 (pp. 85-90) for all sub-sectors. Any increases in confirmed reserves of oil, gas and coal industries were awarded to SOEs, while private enterprises are identified to have lower activity-levels. Annex 10 of the EITI Report also provides information regarding mineral classification in the Ukrainian context, which also serves as the method of determining reserve data for the extractive sector.

The report also covers the oil and gas transportation sectors on pages 69-78, for more information on the EITI Report's coverage of this sector, please see Transport revenues (#4.4) of this assessment.

##### Stakeholder views

Government, companies and civil society representatives did not express any reservations about the

overview of the extractive sector in the 2014-2015 EITI Report, including its overview of exploration activities. The MSG noted they are exploring possibilities for including estimates of reserves for the titanium sector, as technical information about mineral resource reserves (especially for titanium) is currently classified as a state secret by Ukrainian legislation (p. 214).

### Initial assessment

The International Secretariat's initial assessment is that Ukraine has made satisfactory progress towards meeting this requirement. The 2014-2015 EITI Report provides an overview of the extractive industries, including significant exploration activities and developments in all sub-sectors. Where there are gaps in publicly-available information on the extractive industries such as reserves estimates, the MSG is exploring options for improving the process.

## Production data (#3.2)

### Documentation of progress

**Production volumes:** The EITI Report discloses production volumes for each sub-sector separately, largely covering the same information with minor difference. The information is presented as both aggregate numbers and disaggregated by different types of commodities, companies, and regions. The data is mainly sourced from Geoinform SRPE (2017).

Only reserves and production data for titanium are not available from the Ukrainian government, only including estimates. Ukraine considers this information a state secret<sup>87</sup> (pp. 57-59), and subsequently the production data is based on estimates by the U.S. Geological Survey (2016). The report therefore notes that some of these estimates may differ from actual production volumes, and that export volumes and values may be higher than production due to differences in methodology as export data is based on publications of the State Statistics Service of Ukraine (SSSU) (2017).

**Production values:** The report does not include estimates of production values corresponding to the disclosure of production volumes, nor provide information on average prices for each commodity produced. We could not locate any explanation in the report concerning issues with estimation for the purpose of this requirement.

**Location:** See the above paragraphs for production data per geographical location.

### Stakeholder views

Civil society and companies did not express any reservations on production data covered by the EITI Report. However, the private sector representatives did identify that there were multiple and overlapping reporting requirements, creating confusion regarding methodology and calculation. Government stakeholders expressed concerns that no single overview or monitoring of production data exist, which provides contradicting information. They identified that monitoring of production volumes is mainly

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<sup>87</sup> See footnotes 63, 70 and 72.

driven by the need to calculate royalty-liabilities of companies towards the state, but that most of the information is not publishable due to confidentiality issues. No regular verification-methods or responsibilities were highlighted. Stakeholders across the three constituencies are most confident regarding gas production volumes, due to the level of sophistication of monitoring systems of the gas transit-/transportation-system.

None of the stakeholders expressed views on the missing production values, but some pointed to supplementary document produced by the IA which attempting to cover the relevant information under Requirement 3.2 (Ernst & Young, n.d.). During consultations, the IA recognised that production values were not included in the report, nor was an estimation initially attempted. They also confirmed that the supplementary note covers national accounts calculations by the State Statistics Service for sector-wide estimates. The note disaggregates production values by i) mineral and brown coal mining; ii) oil and natural gas extraction, and; iii) extraction of mineral ores, other minerals, operations and auxiliary services. The IA agreed that this is still not disaggregated by commodity, as per Requirement 3.2. One of the primary concerns of the IA in calculating production values themselves is due to three parallel reporting-channels which all use different methods and therefore present different results.

### Initial assessment

The International Secretariat's initial assessment is that Ukraine has made meaningful progress towards meeting this requirement. UAEITI provides, per commodity, production volumes as per Requirement 3.2. Stakeholder consultation drew attention to a potential problem of reliability; production volumes are available through three different channels which present different figures. This is not reflected in the EITI Report and no discussion of the reliability of these numbers were identified. Still, it is our assessment that Ukraine has disclosed data on production volumes to a sufficient degree.

However, production values are not calculated. This was confirmed through consultation with stakeholders. No consistent data on production values appears to exist by commodity, as required by EITI Requirement 3.2. A supplementary note subsequent to the publication of the EITI Report attempted to rectify this missing information, but does not cover production values to a sufficient level of detail.

In line with Requirement 3.2, the MSG should ensure that future reports disclose the production values for every extractives commodity produced, including crude oil, natural gas and every mineral covered by reports. To continue improving on the requirement, the MSG may wish to comment on parallel reporting systems for production volumes including regular publication and verification procedures, to ensure consistent, regular and reliable data.

## Export data (#3.3)

### Documentation of progress

Export volumes: Export data is covered similarly as for production data; for each sub-sector in the EITI Report. Most of the sections cover both production, imports and exports simultaneously, for oil and gas (pp. 44-46), coal (pp. 30-31), iron (pp. 52-55), titanium (pp. 59-60), and manganese (pp. 66-67).

Export values: In addition to the above sections, values concerning the exports of oil, gas, iron and coal are also covered by section 5.10.4 (pp. 101-102).

The sections include both export volumes *and* values. The information is presented as both aggregate numbers and disaggregated by different types of commodities (all sub-sectors). The data is also presented by country of destination for exports. However, unlike production data, the source of the information is from the national statistics office of Ukraine, the SSSU (State Statistics Service of Ukraine, 2017). Coal export data, specifically the information on destination of exports, is the only information still sourced from the Geoinform platform (Geoinform of Ukraine SRPE, 2017).

### Stakeholder views

Stakeholders did not express any reservations towards Requirement 3.3, however government representatives did note that titanium export volume and values are publicly available while production data is not. The representatives clarified that the data is made available due to international reporting requirements, while domestic production data is still limited by state secrecy laws.

### Initial assessment

The International Secretariat's initial assessment is that Ukraine has made satisfactory progress in meeting this requirement. Export data is available both as volumes and values for all sectors. Volumes are available as both aggregate figures per commodity and some disaggregated by sub-types such as hard coal versus brown coal. Both volumes and values are disaggregated by country-destination, and the disclosures overall are in accordance with Requirement 3.3.

Table 3: Summary initial assessment table: Monitoring and production

EITI provisions	Summary of main findings	International Secretariat's initial assessment of progress with the EITI provisions (to be completed for 'required' provisions)
Overview of the extractive sector, including exploration activities (#3.1)	The 2014-2015 EITI Report provides an overview of the extractive industries, including significant exploration activities and developments in all sub-sectors. Where there are gaps in publicly-available information on the extractive industries such as reserves estimates, the MSG is exploring options for improving the process.	Satisfactory progress
Production data (#3.2)	<p>UAEITI provides, per commodity, production volumes as per Requirement 3.2. Stakeholder consultation drew attention to a potential problem of reliability; production volumes are available through three different channels which present different figures. This is not reflected in the EITI Report and no discussion of the reliability of these numbers were identified. Still, it is our assessment that Ukraine has disclosed data on production volumes to a sufficient degree.</p> <p>On the other hand, production values are not calculated. This was confirmed through consultation with stakeholders. No consistent data on production values appears to exist by commodity, as required by EITI Requirement 3.2. A supplementary note subsequent to the publication of the EITI Report attempted to rectify this missing information, but does not cover production values to a sufficient level of detail.</p>	Meaningful progress



Export data (#3.3)	Export data is available both as volumes and values for all sectors. Volumes are available as both aggregate figures per commodity and some disaggregated by sub-types such as hard coal versus brown coal. Both volumes and values are disaggregated by country-destination, and the disclosures overall are in accordance with Requirement 3.3.	Satisfactory progress
<p>Secretariat's recommendations:</p> <ol style="list-style-type: none"> <li>1. In line with Requirement 3.2, the MSG should ensure that future reports disclose the production values for every extractives commodity produced, including crude oil, natural gas and every mineral covered by reports. To continue improving on the requirement, the MSG may wish to comment on parallel reporting systems for production volumes including regular publication and verification procedures, to ensure consistent, regular and reliable data.</li> </ol>		

## 4. Revenue collection

### 4.1 Overview

This section provides details on the implementation of the EITI requirements related to revenue transparency, including the comprehensiveness, quality and level of detail disclosed. It also considers compliance with the EITI Requirements related to procedures for producing EITI Reports.

### 4.2 Assessment

#### Materiality (#4.1)

##### Documentation of progress

For the sake of the EITI Reporting scope, the IA reviewed subsectors of the extractive industries and suggested covering upstream oil, gas, coal and iron ore as well as oil and gas transportation (UAEITI, 2016e). On 6 September 2016, the MSG discussed the outcomes of the 2016 EITI Scoping Study and agreed to include the above-mentioned sectors that constitute for 95% of the government revenues from the extractive industries into the 2014-2015 EITI Report (UA-EITI, 2016c). An MSG government representative suggested adding two more mining sectors that were less significant sectors revenue-wise, but highly attractive for foreign investment. Therefore, the MSG agreed to add manganese and titanium mining sectors to the reporting scope (UA-EITI, 2016c). The MSG has also considered uranium for inclusion into the EITI Report, however, according to the 2016 EITI Scoping Study, despite significant reserves, production of uranium was defined as insignificant (UAEITI, 2016e).

##### Materiality threshold for revenue streams:

The 2016 EITI Scoping Study (pp.10-15) explains that in order to identify the materiality of revenue streams, the IA EY has requested the State Fiscal Service of Ukraine to provide information on revenues from the extractive companies to the State Budget. According to the Scoping Study, there are 36 taxes and 22 non-tax payments from the extractive companies recorded in the State Budget. The IA suggested to include the revenues streams that constituted for 97.65% of all extractive revenues in 2014 and 95.49% in 2015. During the course of the stakeholder consultation, the IA explained that non-tax payments covered about 1% of total government's revenues from the extractive industries. While the MSG and IA didn't give an explicit quantitative materiality threshold, they used a targeted reconciliation approach. Therefore, the following nine tax and non-tax revenues streams were identified and approved by the MSG. Namely, personal income tax; corporate income tax; subsoil use fee; VAT; excise tax; transportation royalties; environmental tax; income tax from property and entrepreneurial activities; and unified social contribution. The IA concluded that all significant payments and revenues were included in the scope of the EITI Report and that it would fully and comprehensively show the government's revenues from the extractive industries, given the companies provide full disclosure (UAEITI, 2016e).

On 6 September 2016, the MSG discussed the outcomes of the 2016 EITI Scoping Study and approved the above-mentioned revenue streams for the 2014-2015 EITI Report (UA-EITI, 2016c).

*Descriptions of material revenue streams*

There does not seem to be any revenue streams that are required by the EITI Standard missing from the EITI Report. The reconciliation includes the nine biggest revenue streams, covering more than 95% of all tax revenues from the extractive industries. These are Personal income tax; Corporate income tax; Production royalty (subsoil use (rent) fee for production of mineral resources); Value added tax; Excise tax on excisable goods manufactured in Ukraine (hereinafter – excise tax); Transportation royalty for natural gas; Transportation royalty for oil and oil products; Environmental tax; Income from property and business activity; and Unified social contribution (p. 167). Revenue streams are described in detail, including links to the specific sections of the Tax Code, in Section 6.4 on pp. 133-146.

*Materiality threshold for companies:*

According to the IA, the MSG decided to select 97 extractive companies out of the 673 total, that constitute for 99% of tax revenues from extractive industries to the State Budget (p. 167). The MSG and IA used a same reconciliation approach to selecting the material companies. The full list of companies under the EITI scope, including those that did not report is provided on pp. 36-37 of the Summary EITI Report. All extractive companies, that held licenses in 2014-2015 and the commodities produced are listed in Annex 3 on pp. 228. The full list of companies within the EITI scope, including those that did not report is provided in Annex 18 on pp. 524. The IA provides a short commentary on comprehensiveness of company reporting by saying that “the lack of responses from most of the companies makes full reconciliation of payments impossible” (p.172).

*Material companies and reporting:*

The 2014-15 EITI Report states that only 51 companies out of 97 submitted EITI data (p. 172). The IA also comments that seven extractive companies outside of the scope provided reporting data despite being below the materiality threshold (p. 172). Following the stakeholder consultations, the IA explained that 59 companies submitted the reporting forms as in addition to the 51 reporting companies, received data from seven small-scale companies on a voluntary basis and DTEK Dobropillivuhillia LLC provided only partial information. Therefore, the total number of the companies included into the EITI Report is 104, instead of 97 material companies (Ernst and Young, 2017). The IA does not comment on the materiality of company omissions. The IA does not comment whether the disclosures are comprehensive.

*Material government entities and reporting:*

Annex 18 of the report (p.524) lists 28 government entities that were involved in providing contextual and financial data for the 2014-15 EITI Report. According to Annex 18, only six government entities replied that could not provide or did not have the requested data. These are the Ministry of Health; State Mineral Resource Reserves Commission; State Agricultural Inspectorate; Lviv State Institute for Designing Refineries and Petrochemical Enterprises; Ukrtransnaftoproduct State Enterprise; and Directorate of Construction. The International Secretariat’s understanding is that none of the six above-mentioned government entities is engaged in the governance of the extractive industries, including collection of revenues. According to the Summary Data Forms for 2014 and 2015, the sole collector of tax and non-tax revenues in Ukraine is the State Fiscal Service and it has provided full disclosure.

*Discrepancies:*

Section 4.3 of the EITI Report (p. 23) explains that the MSG members agreed that discrepancies of 5% of reported revenue stream or less were considered immaterial and should not be investigated by the IA

(UAEITI, 2017b). Tables 7.3-5 and 7.3-6 (p.175) show that the discrepancies are insignificant and below the materiality threshold for investigations. According to the MSG's decision, the discrepancies were not investigated by the IA (UA-EITI, 2016c).

#### Full government disclosure:

The Summary Data Forms for 2014 and 2015 show that the sole collector of tax and non-tax revenues in Ukraine is the State Fiscal Service that has provided full unilateral disclosure of total income, including from non-reporting companies, for each material revenue stream.

### Stakeholder views

MSG members confirmed that discussed and agreed the material extractive sectors, revenues and companies at their meeting in September 2016, when the IA presented the outcomes of the scoping study. Stakeholders explained that the IA took all extractive companies from oil, gas and mining sectors and hydrocarbon transportation and selected 97 biggest companies that covered 95% of the government revenues. When asked about the total number of companies, the IA commented that seven immaterial companies voluntarily submitted the reporting forms and thus were added to the initial 97 selected companies, making the total number of 104 extractive companies.

MSG members raised concerns regarding the companies that failed to report. Most of them were the mining companies that are not mandated to report under the EITI Standard. In addition to this, most of the coal mining companies were situated in the eastern conflict zone and were not able to recover the data from 2014 and 2015 or in worst case scenario lost their control over the mines.

All stakeholders confirmed that nine material streams were approved based on the scoping study and that for the 2016 EITI Report they would add a 5% rent payment to the communities. One civil society member said that in the future it would be good to consider a sun-national payment – land tax – that was not material with regards to the State Budget, but could be significant on the local level.

During the stakeholder consultation, the IA explained that it was challenging to investigate the discrepancies as SFS was not willing to provide official explanations. When asked if the IA requested SFS to explain discrepancies, the IA admitted that did not send any official letter to SFS with regards to discrepancies. It was also noted that the data from SFS came very late, making it difficult to send yet another request.

A government representative explained that most of the discrepancies were due to the difference in accounting systems of SFS and the extractive companies. SFS considered the revenues that were received in cash, whereas the companies accounted payments on accrual basis. There were instances, when companies had significant debts and fines for failure to pay taxes in previous fiscal years, but added those to the 2015 reporting period. With regards to SFS's unwillingness to explain the discrepancies, a government representative noted that there did not seem to be any official requests submitted from the IA.

### Initial assessment

The International Secretariat's assessment is that **Ukraine** has made **meaningful** progress towards

meeting this requirement. Despite a lack of explicit quantitative materiality threshold, the MSG and IA used a targeted reconciliation approach, following the outcomes of the scoping study. The MSG's decision on selecting all significant revenues streams and the biggest taxpaying companies in documents in its meeting minutes. The report provides descriptions for each revenues stream. The report appears to provide a comprehensive reconciliation of government revenues and company payments in accordance with the agreed scope, including the government's disclosure of revenues from companies below the materiality threshold. The report is not explicit about the reporting government entities. The report does not provide an assessment of the materiality of company omissions. The IA's conclusion on the comprehensiveness of the disclosure and explanation of the discrepancies are missing.

In the next EITI Report, the MSG should ensure that full government disclosure is clearly presented by separate entity and revenue stream. The MSG should also ensure that the IA includes a clear assessment of the comprehensiveness of the next EITI Report, that discrepancies are explained and investigated where necessary.

## In-kind revenues (#4.2)

### Documentation of progress

Annex 19 of the 2014-15 EITI Report provides an explanation that the government does not collect oil, gas and mining revenues in kind. The sale of revenues received in kind is not applicable.

### Stakeholder views

A government representative confirmed that the government does not collect revenues in kind, and no other stakeholders highlighted this as an issue of relevance in Ukraine.

### Initial assessment

The International Secretariat's initial assessment is that this requirement is not applicable in Ukraine.

## Barter and infrastructure transactions (#4.3)

### Documentation of progress

Annex 19 of the EITI Report states the following: The mechanisms for infrastructure provisions and barter arrangements are not used in Ukraine. The IA was tasked to explore whether infrastructure and barter agreements are applicable in Ukraine. The 2016 Scoping Study prepared by the Independent Administrator Ernst&Young did not confirm that infrastructure and barter transactions were practiced in the country. The MSG discussed the findings of the 2016 Scoping study, including infrastructure and barter transactions and concluded that this requirement was not applicable in Ukraine (UA-EITI, 2016c).

### Stakeholder views

Representatives from government and companies confirmed that infrastructure and barter transactions were not practiced in Ukraine, and no other stakeholders highlighted this as an issue of relevance.

## Initial assessment

The International Secretariat's initial assessment is that this requirement is not applicable in Ukraine.

## Transport revenues (#4.4)

### Documentation of progress

Transportation of oil and gas through the territory of Ukraine is material and covered in the EITI Report under Section 5.7 on pp. 69-78. The 2014-15 EITI Report states that in 2015 the volume of gas transit over the territory of Ukraine amounted at 67.1 b m<sup>3</sup>. The report notes that in 2015 the government started reforming the transportation sector by transferring the transportation functions from Naftogas to Ukrtransgas PJSC as an independent transportation operator. The tariff system was improved as well (p.12).

The report provides a description of the transportation arrangements such as commodities (oil and gas), transportation routes, the pipelines and their capacity, legal framework governing the sector, and operating companies. Oil and gas transportation system is operated by two state-owned companies – Ukrtransgaz and Ukrtransnafta. Ukrtransgaz PJSC provides daily updated information on its website<sup>88</sup> the operation within the gas transportation system in Ukraine. Ukrtransnafta PJSC is the sole national oil transportation company that operates three pipelines. Ukrtransnafta PJSC transits Russian Urals grade oil as well as domestically produced Ukrainian oil from the production areas to the refineries. (pp. 73-74).

The report provides a definition of relevant transportation taxes, tariff rates (p.72, p.75) and volumes of gas (p.73) and oil (p.76). The report explains that since 2016 a general tariff for transportation of the natural gas has become UAH 732.7 (USD 28) per one thousand m<sup>3</sup>. With regards to the 2014-2015 tariffs the IA comments the following:

“The tariff for natural gas transportation was significantly changed during 2014-2015 due to several factors, mainly because of Ukrainian hryvnia devaluation against world currencies and decreasing of oil and natural gas in the global markets” (p.72).

In terms of revenues, the report discloses the total income from gas transportation of Ukrtransgaz (p.72) and the total income received for oil transportation by Ukrtransnafta (p. 76), but it does not disaggregate by transport route/revenue stream, neither by paying company. The report reconciles transportation royalties (table 7.4-14 on p.189). Section 7.6 on Reconciliation of oil and gas transportation revenues provides the reconciliation of the transportation revenues from Ukrtransnafta and Ukrtransgaz in a chart on p.209. The report notes that Ukrgazvydobuvannia PJSC and Ukrnafta PJSC are largest payers for the natural gas transportation, covering 83% of total companies' payments to the gas transportation system operator in 2014 and about 73% of total payments for transportation in 2015 (p.209). In addition, the report discloses the total taxes paid by Ukrtransgaz and Ukrtransnafta to the government of Ukraine.

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<sup>88</sup> <http://utg.ua/live/>

## Stakeholder views

Stakeholders commented that the transportation of oil and gas has been included into the EITI scope since the first EITI Report that covered 2013 fiscal year. There were no particular views on whether the requirement was comprehensively addressed in the 2014-15 EITI Report.

The Independent Administrator commented that oil and gas tariffs from 2014 were no longer relevant as in 2015 the Parliament adopted a new legislation to regulate the oil and gas transportation operations. All the tariffs were clear, except for one contract for gas transit between Naftogas and Gazprom (Russia). The conditions of the contract were closed as well as the tariffs. The volumes of gas transit are disclosed on the Ukrtransgaz website.

An industry representative commented that Ukrtransgas was transparent about the gas system and that the data on daily volume and value of the gas being transported and stored was available online. A representative of Ukrtransnafta did not meet with the International Secretariat.

A civil society representative commented that the oil and gas transportation was more or less transparent, the real issue was behind transportation of gas between regional gas operating units and households. Given the gas supply to households is mostly subsidised by the budget, the local gas operating companies might be misleading in the volumes of gas supply to the end consumer.

## Initial assessment

The International Secretariat's initial assessment is that **Ukraine** has made **meaningful** progress in meeting this requirement. The MSG has made tangible efforts to increase transparency in transportation arrangements, such as description of the transportation arrangements, definitions of taxes, tariff rates and the methodology used to calculate them, and volume. However, the revenues received in tariffs and other payments are not disaggregated by paying company and by transport route/revenue stream.

According to the Validation Guide, "Disclosure of material transportation revenues is expected, but not required for compliance with the EITI provisions. Where transportation revenues are material but not disclosed, Validation is expected to evaluate whether the MSG has documented and explained the barriers to provision of this information and any government plans to overcome these barriers". It does not seem that the report provides an explanation of barriers to full transparency in transportation of oil and gas. The MSG should ensure that the next report disaggregates the transportation revenues by pipeline/route and by paying company.

## Transactions between SOEs and government (#4.5)

### Documentation of progress

SOEs do not have the mandate to collect revenues on behalf of the government, but make payments to the government from the operations they are involved in the same way as private enterprises. These are reconciled accordingly (annex 13 and 14). In addition to regular payments made by all companies, SOEs pay dividends to the state (income from property and business activity; pp.176,192-193).



Apart from the above, the report does not explicitly identify other transactions exist between the SOEs and the government. However, Annex 19 (p.526) includes a reference to section 7.5.3 for transactions related to state-owned enterprises<sup>89</sup>, and so does the additional comments of the IA (Ernst & Young, n.d.). Section 7.5.3 highlights extractive companies' transactions to government entities and SOEs alike, indicating that additional transactions do occur. The section includes *total values* for transactions between companies and SOEs, companies and government agencies, and SOEs and agencies. It discloses aggregate numbers and does not describe the reasoning for payments other than in general terms. The report therefore does not provide sufficient information for us to determine which payments may be of a commercial nature, quasi fiscal expenditures, or other forms of payments.

For the oil sector, the report refers to annual financial statements of Naftogaz and Nadra Ukrainy (pp. 104-105). Naftogaz Annual Report for financial year 2015 (National Joint Stock Company "Naftogaz of Ukraine", 2016) contains a section specifically identifying several transactions to government entities or - controlled companies (ibid., pp.222-223). It states that Naftogaz performs significant transactions with several other SOEs and entities, listing the State Savings Bank of Ukraine, Ukreximbank, Ukgazbank, district heating companies, regional gas distribution entities, as well as others. None of these are identified in the EITI Report. Aggregate numbers for these transactions are included under note 13 on page 228 of Naftogaz' annual report.

Returning to the EITI Report, there are certain established procedures for the use of public funds allocated from individual budget programs. The Ministry of Energy and Coal Industry of Ukraine (MECI) provides financial information regarding budget programs for supporting the coal industry, also highlighting how much funds are allocated to these companies (pp. 103). These programs are solely for the use in coal industry, and enterprises 100% owned by the state are eligible for such support (p. 104). Based on the coal sector alone, it is not possible to determine the comprehensiveness of the information, the program-reports do not include end recipients of funds. The latter point is also emphasised in the EITI Report.

In addition to budget expenditures specified in the State Budget for the year, the SOEs in the mining sector enjoy certain tax benefits, which are loss of budget revenues. Specifically, these benefits include the possibility to expense the costs of free coal, and, consequently, reduce the income tax base. The above tax credit was cancelled in 2015 (p.104).

The state also participates in Dyrektsiya Kryvorizkogo GZK State Enterprise (KGZKOR) on the iron sector (p. 106). The report identifies the Ministry of Economic Development and Trade as the manager of state budget funds allocated for the iron ore rehabilitation programs. The section on iron ores also does not list the end-recipients of the funds, making verification of transactions difficult (ibid.).

## Stakeholder views

Representatives of state-owned enterprises confirmed that SOEs are subject to the same payment obligations as private sector companies, and report similarly. For subsidiaries of large SOEs such as Naftogaz, payment obligations toward the state are consolidated at the parent-level, as well as financial

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<sup>89</sup> This section is misstated as 7.5.2 in the EITI Report on p.196

reporting obligations. These representatives did not identify transaction between Naftogaz and MEDT, but highlighted some income taxes that were not directed to the state budget. Instead, these are diverted towards covering net losses of its subsidiaries. This latter point has also been confirmed independently by review of IMF's recent Article IV Consultation with Ukraine (IMF, 2017), in which the payments are identified as quasi-fiscal expenditures. None of these issues are clarified by the EITI Report. In effect, Naftogaz' financial reports then become even more important from a transparency perspective. For petroleum-transport and transit companies, tariffs are considered and approved by the main regulator, the National Commission Enhancing Government Regulation in Power and Commercial Services. Subsequently, the CMU approves the production and tariff-plans which are executed accordingly.

Representatives of the government confirmed this and clarified that all SOEs have an obligation to pay dividends to the state of 30 per cent of profits. The rest can be retained and reinvested. However, none of this information was included in the EITI Report, but was included in a supplementary note provided by the IA (Ernst & Young, n.d.). Some government representatives claimed that SOEs are indirectly subsidising local government units through social expenditure projects. The claim is that a great deal of overlap exists between mandatory and non-mandatory social expenditures and quasi-fiscal ones. The national secretariat also commented that the MSG looked into the matters of transactions between SOEs and other entities, as documented in MSG Meeting minutes from 29 May 2017, but no follow up has been identified.

Lastly, both civil society and government representatives took note of a subsidy-scheme in the Ukrainian context. Essentially, it starts with a social security-scheme in which households with incomes below a certain threshold are eligible for subsidised heating and utilities. This subsidy is paid from the state budget via local government units to the households, which in turn uses the subsidy to pay their utility bill to the district heating company (often an SOE). The same subsidy is paid forward to regional gas distribution companies which are often SOEs, until finally it reaches Naftogaz. In turn, Naftogaz provides part of the subsidy to the gas-producer, e.g. Ukgazvydobuvannya, and both Naftogaz and the production-company accounts for the subsidy in their net tax and dividend-liabilities to the state budget. The total transfers from central government to households goes through local government units, and the totals of these transfers are listed in Annex 12 of the EITI Report. However, we are unable to determine whether these transfers are comprehensive or accurate.

### Initial assessment

The International Secretariat's initial assessment is that Ukraine has made inadequate progress in meeting this requirement. Due to the amount of SOEs in Ukraine, alongside limited information regarding transactions of SOEs, we are unable to assess whether the EITI Report comprehensively addresses SOE transactions. Much of the above-mentioned information was gathered or clarified by stakeholders during consultation, and are not sufficiently documented. The report does include aggregate information regarding transfers to and from SOEs from various private companies and establishes some of the statutory rules concerning transactions related to SOEs. However often the information is presented in long tables without a description or assessment of comprehensiveness of disclosure. The International Secretariat therefore concludes that Requirement 4.5 has not been met.

As per Requirement 4.5, the MSG should engage relevant government entities and SOEs with the view to ensure that the reporting process comprehensively addresses the role of state-owned enterprises

(SOEs), including material payments to SOEs from oil, gas and mining companies, and transfers between SOEs and other government agencies.

The MSG is recommended to engage relevant government agencies to ensure an overview of state ownership is accessible and regularly updated. Related to such an overview should also contain the general governing principles of managing SOEs', in addition to specific information for SOEs in the extractive sector.

## Subnational direct payments (#4.6)

### Documentation of progress

The 2016 EITI Scoping Study miscategorises subnational transfers as direct subnational payments, listing the following material revenue streams:

- Personal income tax – Section 7.4.1 (p.177), and Annex 13 (21.1), and Annex 14 (22.1);
- Environmental tax – Section 7.4.7 (p.190), and Annex 13 (21.7), and Annex 14 (22.7) (UAEITI, 2016e).

Information on the distribution of tax revenues between the budgets of various levels is covered in Section 6.4 of the report. According to the figure 6.4-13 on p. 145, 25% of the personal income tax go to the State Budget, 15% go to the regional budgets and 60% go to the local governments. According to the figure 6.4-11 on p. 144, 20% of the environmental tax go to the State Budget, 25% go to the regional budgets and 55% go to the united communities' budgets and municipal budgets. Personal income tax and environmental tax are reconciled. Given the above-mentioned the International Secretariat understands that both personal income tax and environmental tax are levied by SFS and go to the State Budget, where they are transferred to the regional budgets and municipalities in accordance with the annual budget process.

### Stakeholder views

While undertaking the consultations, it seems that the stakeholders did not fully understood the requirement on subnational payments. A government representative explained that all payments go to the State Budget and are redistributed to the local budgets.

The Independent Administrator noted that the SFS levied all payments.

### Initial assessment

The International Secretariat's initial assessment is that this requirement is not applicable in Ukraine. Although some taxes are channelled to the local level, there is a centralised taxes and payments collection system monitored by the SFS. Thus, the local governments do not directly receive and account for payments by extractive companies.

## Level of disaggregation (#4.7)

### Documentation of progress

The 2014-15 EITI Report discloses data by individual company and individual revenue stream, but not by individual government entity. However, as noted under requirement 4.1 above, there is only one government entity that collects taxes and other non-tax payments, notably the State Fiscal Service. Other 11 government entities listed in the report provided contextual information. This is clearly highlighted in the Summary Data Forms for 2014 and 2015. Therefore, the report is implicitly disaggregated to the level required by the EITI Standard. With regards to project level reporting, Ukraine's current EITI Reporting is not disaggregated by project.

### Stakeholder views

Stakeholders consulted did not raise any views regarding the level of disaggregation of EITI data. With regards to the government reporting, the IA confirmed that SFS collected all revenues.

### Initial assessment

The International Secretariat's initial assessment is that **Ukraine** has made **satisfactory** progress in meeting this requirement. To strengthen this requirement, the MSG may wish to add a clear explanation on the which government entity collects all tax and non-tax revenues in Ukraine.

## Data timeliness (#4.8)

### Documentation of progress

The EITI Report covering data for 2014 and 2015 fiscal years was published on 21 February 2017. Due to difficulties with obtaining the coal data from extractive companies operating in the Donetsk and Luhansk regions, the MSG sought an extension of the deadline (31 December 2016) for publishing the second EITI Report. Ukraine's extension request was submitted to the EITI Board in December 2016. The EITI Board agreed that the military crisis has clearly impacted the scoping and data collection work and that these are exceptional circumstances beyond the MSG's control. The Board decided to extend Ukraine's deadline by three months to 31 March 2017. Ukraine met the extended deadline.

### Stakeholder views

An Independent Administrator commented that it was challenging to collect data from the extractive companies, especially those situated in the conflict zone.

All MSG members admitted the issue of timely reporting from the mining industry, coal in particular and that they will continue working with the members of Parliament for adopting the Law on Transparency of Information in the Extractive Industries that will mandate all extractive companies to report under the EITI Standard.

## Initial assessment

The International Secretariat's initial assessment is that **Ukraine** has made **satisfactory** progress towards meeting this requirement. The 2014-15 EITI Report was published within extended deadline agreed by the EITI Board.

## Data quality (#4.9)

### Documentation of progress

#### Appointment of the Independent Administrator (IA):

The MSG agreed to appoint Ernst&Young as the Independent Administrator on 24 May 2016, following a public tender conducted by the MECL, in accordance with the World Bank's procurement procedures (UA-EITI, 2016d). In July-August 2016 the Independent Administrator carried out a scoping study to identify the material payments to be included to the report. On 6 September 2016, the Independent Administrator presented the scoping study and the inception report to the MSG (UA-EITI, 2016c).

#### Terms of Reference for the Independent Administrator:

The ToRs for the IA are in line with the Standard ToRs agreed by the EITI Board reflecting the 2013 EITI Standard. On 21 March 2016 the MSG approved the ToRs for the 2014-2015 EITI Report (UA-EITI, 2016e). Section 2.1 of the ToRs adds that the IA is mandated to develop reporting guidelines and training materials for a series of workshops on how to fill in the reporting templates for the government and extractive companies (UAEITI, 2016a).

#### Agreement on the reporting templates:

The MSG reviewed and agreed on the reporting templates during its meeting on 6 September 2016, following the recommendation from the IA (UA-EITI, 2016c).

#### Review of audit practices:

With regards to statutory audit practices of *extractives companies*, the 2014-15 EITI Report states that companies are not required to undertake a statutory external audit. The auditing standards used in Ukraine are based on auditing and ethics standards of International Federation of Accountants in compliance with of the Law on "Audit Activity" and Law on "Prevention and Counteraction to Money Laundering, Terrorism Financing and Financing of Mass Destruction Weapons Distribution" (p.522).

In terms of the practice, the extractive companies usually do not undertake an external financial audit. The report explains that in recent years, a few drafts law introducing mandatory financial audit of extractive companies were discussed by the Parliament, but never adopted. However, according to Annex 17, 34 reporting companies out of 51 had their financial statements audited and available online, which make the prevailing majority of the company data reliable.

With regards to the audit practice for SOEs, the report notes that the law does not mandate SOEs to undertake a statutory external audit and explains further that the state financial control over the accuracy and financial report of SOEs is performed in accordance with the Law on "Main Principles of the State Financial Control" (p.523).

With regards to statutory audit procedures for the *government entities*, the 2014-25 EITI Report provides a summary of the IA's review. The Accounting Chamber oversees the state revenues and expenditures and its financial reports are available online<sup>90</sup>. Whereas the State Audit Service oversees the implementation of the budget programmes (p.162). The report does not state whether the Accounting Chamber's reports for 2014 and 2015 were provided to the IA in preparation of the 2014-15 EITI Report.

Assurance methodology:

Section 4.3 of the EITI Report on p. 23 says that material companies were asked to submit certification letters from their senior officers, attesting that the company's EITI reporting was reliable. Reporting templates from all reporting government entities were required to be signed by a high-level official, attesting the accuracy of data. The reporting forms provided by the government were signed by the senior officials (p.23).

Confidentiality:

The 2014-15 EITI Report does not comment on the procedures agreed with the IA for safeguarding confidential information. Through stakeholder consultation, the IA confirmed that its contract includes a confidentiality provision with the duration of five years. The hard copies of the reporting forms are stored in the Ministry of Energy and Coal for its archive.

Reconciliation coverage:

The scope of reconciliation in EITI report includes nine types of payments from 97 largest extractive companies, that cover UAH 88,409.0 m, or 95.5% of total government revenues from extractive industries in 2015. (p. 10 and p.168) The IA comments that "The share of government revenues, which were reconciled, in total revenues, designed for reconciliation, is 82.6% in 2014 and 82.8% in 2015. The highest completeness rate of reconciliation is in coal industry (98.1% in 2014 and 93.9% in 2015), the lowest – metal ores industries (66.1% in 2014 and 65.6% in 2015)." (p. 10) It is also noted that "Share of government revenues, which were reconciled, calculated without revenues from extractive companies from temporarily occupied territory of Ukraine".

Based on the findings of the scoping study, the MSG decided to add two sectors that fall below the materiality scope – manganese and titanium given their potential for future investment. The IA does not comment on the comprehensiveness of the data reliability provided by the companies.

Assurance omissions:

Annex 17 on p.515 lists the material extractive companies, including both private and state-owned, and shows that 40 out of the 51 companies that reported had their reporting forms signed by senior officers. However, the Annex also shows that ten reporting companies that did not provide a certification letter signed by a senior officer, have provided link to their public financial statements audits. Despite the partial assurance by sign-off letters, the data provided by the material reporting companies seems to be assured. However, the EITI Report does not assess the materiality of payments to government from individual companies that did not provide the required quality assurance. The EITI Report provides a comprehensive list of companies and government entities that did not comply with the agreed quality

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<sup>90</sup> <http://www.ac-rada.gov.ua/control/main/uk/publish/category/16748561>

assurance procedures for their EITI reporting (p. 515, p.524).

The IA concludes that lack of external financial audit of all material companies limits the opportunities for the greater transparency through reliable verification of the reporting data (p.217).

#### Data reliability assessment

Section 4.3 on p. 23 says the following: “The reliability of data provided by extractive companies (private and public) was confirmed by the signatures of senior officials of these companies, which guarantee the correctness of data provided, and / or by conclusions of the external auditor on the data provided (in the case of report availability), for each company. The reliability of data provided by the central and local authorities was confirmed by the signatures of senior officials of the institution on the one hand, and the principles of interaction among various authorities and provision of reliable data on the other hand”.

Where audited financial statements of the material companies are publicly available, the links are provided (pp. 515-522). Annex 17 on company reporting reliability and Annex 18 on government reporting reliability clearly shows the companies and government entities that reported and that did not report.

The IA does not comment on the data reliability from the government. However, according to Annex 18, the sole revenue collector – the SFS – provided full disclosure with a sign-off letter from a senior official. The IA does not provide an assessment of the comprehensiveness of the data reported or comment on whether the non-reporting has had any material impact on the comprehensiveness of the report.

#### Sourcing of information:

The contextual information was prepared by the Independent Administrator – EY – in the 2014-2015 EITI Report. The EITI Report does not include statements from stakeholders. The non-revenue information in the report is adequately sourced, most often citing government agencies as providers of the information. In some cases, direct links to documents (such as contracts, laws and financial reports) are provided to facilitate access to such resources.

#### Summary data:

Summary data from the 2014-15 EITI Report have been submitted electronically to the International Secretariat in accordance with the standardised reporting format.

#### Past recommendations:

The ToRs for IA tasks the IA with making recommendations for strengthening the reporting process including any recommendations regarding audit practices and reforms needed. The IA provides recommendation on pp. 214-219, however does not comment on the status of implementing the previous recommendations.

#### Current recommendations:

The Independent Administrator makes recommendations for strengthening the reporting process in the future, including recommendations regarding audit practices and reforms needed to bring them in line with international standards, and where appropriate, recommendations for other extractive sector



reforms related to strengthening the impact of implementation of the EITI on natural resource governance pp. 214-219. In terms of strengthening the data reliability, the IA recommends introducing mandatory financial audit for the extractive companies and making the financial statements public.

### Stakeholder views

Stakeholders from all constituencies highlighted that the quality of the second EITI Report improved and that they were satisfied with the work of the IA.

With regards to the assurance practice, a government representative confirmed that the data, provided by the reporting government entities were signed by a high-level official, in particular the data from the SFS. During the course of stakeholder consultations, the International Secretariat learnt that the State Audit Service was responsible for auditing the 36 biggest state-owned companies, including Naftogaz Ukraina, Ukrtrabsgaz and Ukgazvydobuvannya<sup>91</sup>.

With regards to the reporting templates, the Independent Administrator said that the reporting templates were prepared in close discussion with the MSG and were designed to provide a comprehensive overview of the EITI requirements. It was noted that the MSG civil society group tended to push for additional information and that the current reporting templates were a result of careful consideration.

With regards to the confidentiality, the IA commented that used its internal system to store and use the data from the reporting forms and that the hard copies were stored by the national secretariat. The national secretariat explained that according to the MECI's internal procedures, the hard copies of the EITI reporting forms had to be stored.

### Initial assessment

The International Secretariat's initial assessment is that **Ukraine** has made **meaningful** progress towards meeting this requirement. The MSG appears to have approved the selection of the IA for the 2014-15 EITI Report, including a ToRs consistent with the Board-approved template, as well as the reporting templates. The IA appears to have reviewed material entities' statutory audit procedures and actual audit practices. . The 2014-15 EITI Report does not assess the significance of reporting from entities that did not comply with the agreed quality assurance procedures. While the IA comments on the quality assurance procedures, it does not seem the comprehensiveness of the report has been assessed in accordance with the ToRs. The IA makes recommendations for strengthening the reporting process and for other extractive sector reforms related to strengthening the impact of implementation of the EITI. The IA has prepared summary tables of data in the Ukraine's EITI Reports.

The MSG should ensure that the Independent Administrator provides an assessment of comprehensiveness and reliability of the (financial) data presented, including an informative summary of the work performed by the Independent Administrator and the limitations of the assessment provided. The Independent Administrator's inception report should document the options considered and the rationale for the assurances to be provided. The MSG should ensure that the next EITI Report includes an

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<sup>91</sup> Auditing reports are available in Ukrainian on the website: <http://www.dkrs.gov.ua/kru/uk/publish/article/131398>

assessment of omissions and if any omissions had material impact on the comprehensiveness and reliability of the report. The next EITI Report should include the IA's opinion regarding that reconciliation, including discrepancies. The MSG should ensure that the confidentiality provisions are clearly agreed and explained.

Table 4: Summary initial assessment table: Revenue collection

EITI provisions	Summary of main findings	International Secretariat's initial assessment of progress with the EITI provisions (to be completed for 'required' provisions)
Comprehensiveness (#4.1)	The MSG and IA used a targeted reconciliation approach, following the outcomes of the scoping study. The MSG's approved all significant revenues streams and the biggest taxpaying companies. The report appears to provide a comprehensive reconciliation of government revenues and company payments in accordance with the agreed scope, including the government's disclosure of revenues from companies below the materiality threshold. The report is not explicit about the reporting government entities, neither provides an assessment of the materiality of company omissions. The IA's conclusion on the comprehensiveness of the disclosure and explanation of the discrepancies are missing.	Meaningful progress
In-kind revenues (#4.2)	The International Secretariat's initial assessment is that this requirement is not applicable in Ukraine.	Not applicable
Barter and infrastructure transactions (#4.3)	The International Secretariat's initial assessment is that this requirement is not applicable in Ukraine.	Not applicable
Transport revenues (#4.4)	Transport revenues are material in Ukraine. While the MSG has made efforts to increase transparency in transportation arrangements, the revenues received in tariffs and other payments are not disaggregated by paying company.	Meaningful progress

Transactions between SOEs and government (#4.5)	Due to the amount of SOEs in Ukraine, alongside limited information regarding transactions of SOEs, we are unable to assess whether the EITI Report comprehensively addresses SOE transactions. Much of the above-mentioned information was gathered or clarified by stakeholders during consultation, and are not sufficiently documented. The report does include aggregate information regarding transfers to and from SOEs from various private companies and establishes some of the statutory rules concerning transactions related to SOEs. However often the information is presented in long tables without a description or assessment of comprehensiveness of disclosure. The International Secretariat therefore concludes that Requirement 4.5 has not been met.	Inadequate progress
Subnational direct payments (#4.6)	The International Secretariat's initial assessment is that this requirement is not applicable in Ukraine. Although some taxes are channelled to the local level, there is a centralised taxes and payments collection system monitored by the SFS. Thus, the local governments do not directly receive and account for payments by extractive companies.	Not applicable
Level of disaggregation (#4.7)	The 2015 EITI Report is disaggregated by individual revenue stream, company and government entity.	Satisfactory progress
Data timeliness (#4.8)	The 2014-15 EITI Report was published within extended deadline agreed by the EITI Board.	Satisfactory progress

Data quality (#4.9)	<p>The MSG appears to have approved the selection of the IA for the 2014-15 EITI Report, including a ToRs consistent with the Board-approved template, as well as the reporting templates. While the IA comments on the quality assurance procedures, it does not seem the comprehensiveness of the report has been assessed in accordance with the ToRs. The report does not assess the significance of reporting from entities that did not comply with the agreed quality assurance procedures. The IA has prepared summary tables of data in the Ukraine's EITI Reports.</p>	Meaningful progress
<p>Secretariat's recommendations:</p> <ol style="list-style-type: none"> <li>1. The MSG should ensure that full government disclosure is clearly presented by separate entity and revenue stream.</li> <li>2. The MSG should ensure that the IA includes a clear assessment of the comprehensiveness of the next EITI Report, that discrepancies are explained and investigated where necessary.</li> <li>3. The MSG should ensure that the next report disaggregates the transportation revenues by pipeline/route and by paying company.</li> <li>4. As per Requirement 4.5, the MSG should engage relevant government entities and SOEs with the view to ensure that the reporting process comprehensively addresses the role of state-owned enterprises (SOEs), including material payments to SOEs from oil, gas and mining companies, and transfers between SOEs and other government agencies.</li> <li>5. The MSG is recommended to engage relevant government agencies to ensure an overview of state ownership is accessible and regularly updated. Related to such an overview should also contain the general governing principles of managing SOEs', in addition to specific information for SOEs in the extractive sector.</li> <li>6. To strengthen implementation, the MSG may wish to add a clear explanation on the government entity, that collect all tax and non-tax revenues in Ukraine.</li> <li>7. The MSG should insure that the next EITI includes an overview of progress on addressing the recommendations from the previous EITI reports.</li> <li>8. The MSG should ensure that the Independent Administrator provides an assessment of comprehensiveness and reliability of the (financial) data presented, including an informative summary of the work performed by the Independent Administrator and the limitations of the assessment provided.</li> <li>9. The Independent Administrator's inception report should document the options considered and the rationale for the assurances to be provided.</li> </ol>		

10. The MSG should ensure that the next EITI Report includes an assessment of omissions and if any omissions had material impact on the comprehensiveness and reliability of the report.
11. The next EITI Report should include the IA's opinion regarding that reconciliation, including discrepancies.
12. The MSG should ensure that the confidentiality provisions are clearly agreed and explained.

## 5. Revenue management and distribution

### 5.1 Overview

This section provides details on the implementation of the EITI requirements related to revenue management and distribution.

### 5.2 Assessment

#### Distribution of revenues (#5.1)

##### Documentation of progress

Section 5.12, Section 6.4 and Annex 12 of the 2014-15 EITI Report present information on distribution of government revenues from extractive industries, also disaggregated by regions and cities. The report explains that the revenues from oil, gas and mining are not earmarked for specific programs or funds and go to the national and local budgets, depending on the type of the tax or payment (p. 111). The biggest tax payments, such as personal income tax, VAT, property tax and corporate income tax are allocated to the State Budget (p. 146). The report explains that even though, some revenues are collected by the local governments, all the extractive revenues are recorded in the State Budget. Afterwards the revenues are allocated back to the regions according to the law. The report notes that a unified social contribution is transferred to the Pension Fund for the purpose of pensions and social security (p. 111).

The report says that the revenues from the payments for oil and gas subsoil use; rent for transit; and surcharge for the natural gas tariff for consumers are transferred from the State Budget to the local budgets as subsidies for the households (i.e. electricity, natural gas, heat, hot water, wastewater, etc.). Table 5.12-1 on pp. 112-115 provides overview of the payments collected by regions.

Section 6.6 of the 2014-15 EITI Report explains a budget process in Ukraine and notes that the national revenue classification system was used for the report (p. 161). The report provides a link to Article 8 on the revenue classification system of the Budget Code of Ukraine and illustrates the examples of revenue codes in Annex 12 (Verkhovna Rada, 2017).

##### Stakeholder views

Most of the stakeholder comments on this requirement referred to the 5% rent payment that was introduced in 2017 and will be enacted in 2018. In particular, stakeholders expressed concerns with regards to the distribution formula and how the money would be spent.

Government and civil society representatives confirmed that the payments could be collected by the local government but eventually were transferred to the State Budget and then allocated according to the Law on the State Budget for the fiscal year.



## Initial assessment

The International Secretariat's initial assessment is that Ukraine has made **satisfactory** progress in meeting this requirement. In accordance with Requirement 5.1, the 2014-15 EITI Report explains how revenues are recorded in the national budget. In the Secretariat's view, Ukraine has also gone beyond the minimum requirements by including references to the national budget classification systems and disclosing examples of the budget codes as encouraged by the EITI Standard.

## Sub-national transfers (#5.2)

### Documentation of progress

The 2014-15 EITI Report confirms mandatory transfers between central and subnational levels of government. The Annex 12 on p.331 of the 2014-15 EITI Report provides information on subsidies (subventions) – transfers between the state and local budgets in accordance with the budget code. The report explains that according to Government's Resolution №20 signed on 20 January 2005 "The State budget revenues from payments for subsoil use for the extraction of gas and gas condensate, rent for transit by natural gas pipelines through the territory of Ukraine and duty collected as a surcharge to the existing natural gas tariff for consumers of all forms of ownership in the 2014-2015 shall be transferred as subventions from the State budget to the local budgets for the purposes of providing subsidies to the householders (including for paying electricity, natural gas, heat, water and wastewater bills etc.)" p.111.

The amount of transfers is approved by the Parliament on an annual basis. Annex 12 of the EITI Report provides a comparison between the budgeted amounts and executed transfers, disaggregated by region (p. 331). The comparison reveals some discrepancies. Although the report does not describe the formula for calculating subnational transfers, it does provide a link to the formula in Resolution<sup>92</sup> #20.

### Stakeholder views

A few civil society representatives commented that the subsidies for the households provided from the extractive industries revenues were troublesome and did not serve their purpose in practice. For instance, the calculations for each region were too vague and approximate. To calculate the amount of a subsidy per regions, the local governments estimated how much a family could consume and then divided the number of citizens by four – supposed number of family members. Then multiplied the expenses by family with the approximate number of families residing in the region. Such estimated calculation did not reflect the number of families, neither their real household expenses.

## Initial assessment

The International Secretariat's initial assessment is that Ukraine has made **satisfactory progress** towards meeting this requirement. The 2014-15 EITI Report describes the system for transferring subsidies (subventions) and compares the budgeted amounts with executed transfers. Although, the report does not contain a clear formula, it provides a link to the formula in the government's resolution. The broader

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<sup>92</sup> <http://zakon3.rada.gov.ua/laws/show/20-2005-%D0%BF>

objective of transparency in subnational transfers is met.

To strengthen the implementation, the MSG may wish to consider providing a detailed explanation of the formula used for allocation of subventions in the EITI Report. The MSG may wish to further investigate the nature of discrepancies between the budgeted amounts and executed transfers.

## Additional information on revenue management and expenditures (#5.3)

### Documentation of progress

The EITI Report does not confirm revenues that are earmarked for specific programmes or geographic regions. However, the report notes that the Ukraine's legislation defines the coal mining industry as unprofitable and therefore, entitled to subsidies. The coal industry receives support from the government and is entitled to the Coal Industry Restructuring Program; the State Support Program for coal mining companies to partially cover the cost of the final coal products; and the State support for construction of carbon and peat mining enterprises, their technical upgrading (pp. 103-104). Table 5.11-1 on pp. 103-104 provides comparison of the allocated subsidies with the actual use of money.

The EITI Report describes the budget process in Ukraine (Section 6.6 on pp. 161-162). Control over the state revenues and expenditures is exercised by the Accounting Chamber that publishes periodic reports on its website. With regards to state audit, the report notes the following: "The state financial control designed to verify the compliance with budget legislation, including the audit of legitimate and effective use of state or municipal funds and property and the implementation of budget programs should be performed by the State Audit Service of Ukraine" p.162.

Section 5.10.2 on p.92 provides an overview of capital investments in extractive industries in Ukraine.

### Stakeholder views

Civil society representatives commented that the coal industry was mostly state-owned and heavily subsidised, however, after the occupation of the eastern territories, the government lost its control over most of the mines.

### Initial assessment

Reporting on revenue management and expenditures is encouraged but not required by the EITI Standard and progress with this requirement will not have any implications for a country's EITI status. In the International Secretariat's view, Ukraine has gone beyond the minimum requirements by providing additional information on revenue management and expenditures as encouraged by the EITI Standard.

Table 5: Summary initial assessment table: Revenue management and distribution

EITI provisions	Summary of main findings	International Secretariat's initial assessment of progress with the EITI provisions (to be completed for 'required' provisions)
Distribution of revenues (#5.1)	The 2014-15 EITI Report explains how revenues are recorded in the national budget. In the Secretariat's view, Ukraine has also gone beyond the minimum requirements by including references to the national budget classification systems as encouraged by the EITI Standard.	Beyond
Sub-national transfers (#5.2)	The 2014-15 EITI Report describes the system for transferring subsidies (subventions) and compares the budgeted amounts with executed transfers. Although, the report does not contain a clear formula, it provides a link to the formula in the government's resolution. The broader objective of transparency in subnational transfers is met.	Satisfactory progress
Information on revenue management and expenditures (#5.3)	Reporting on revenue management and expenditures is encouraged but not required by the EITI Standard and progress with this requirement will not have any implications for a country's EITI status. In the International Secretariat's view, Ukraine has gone beyond the minimum requirements by providing additional information on revenue management and expenditures as encouraged by the EITI Standard.	Not applicable
<p>Initial conclusions and recommendations:</p> <ol style="list-style-type: none"> <li>1. To strengthen implementation, the MSG may wish to consider providing detailed explanation of the formula used for allocation of subventions in the EITI Report.</li> <li>2. To strengthen implementation, the MSG may wish to further investigate the nature of discrepancies between the budgeted amounts and executed transfers.</li> </ol>		

## 6. Social and economic spending

### 6.1 Overview

This section provides details on the implementation of the EITI requirements related to social and economic spending (SOE quasi-fiscal expenditures, social expenditures and contribution of the extractive sector to the economy).

### 6.2 Assessment

#### Social expenditures (#6.1)

##### Documentation of progress

It does not seem that mandatory social expenditures are practiced in Ukraine. Section 7.7 of the 2014-15 EITI Report provides information on voluntary social payments. Even though the IA refers to some social payments as mandatory, according to the stakeholder consultations, these are the obligations from the social community agreements, signed by companies on a voluntary basis. This was clarified and confirmed through stakeholder consultation (see stakeholder views).

Table 7.7.1 on p. 212 compares the amount of the social expenditures between mining, oil and gas industries in 2014 and 2015. The total value of social expenditures paid by the extractive companies in 2014 and 2015 is disclosed in Section 7.7 on p. 211. Table 7.7.2 on p. 213 also lists eleven companies that were the biggest social contributors in the covered period.

The MSG meeting minutes confirms the discussion about the social expenditures and that the civil society representatives asked to include a question on social expenditures into the reporting template. The MSG decided to organise a separate meeting with the companies and the IA in order to agree on how to cover the social expenditures in the report (UA-EITI, 2016c). At the MSG meeting on 15 November 2016 the IA raised an issue that oil and gas companies were not keen to provide the data on social payments (UAEITI, 2016f).

The 2016 Annual Progress Report provides the following comment with regards to the discretionary social expenditures:

“At the meetings of MSG, the members once and again emphasized the importance of reporting the social costs of the companies. The embodiment of aforesaid discussions was the inclusion of information on social purposes costs of extractive companies to the Report” (UAEITI, 2017).

The report provides records of cash expenditures only. The report does not comment on the beneficiaries of the social expenditures.

## Stakeholder views

At the MSG meeting all stakeholders, including MSG Chair, confirmed that there were no social expenditures mandated by law.

A government representative confirmed that that social expenditures were not mandated by law or usual license agreements and that companies sign social corporate responsibly agreements with the communities and local governments. However, there might have been a few license agreements signed on early stages of Ukraine's Independence that could've had mandatory social expenditures. It was noted that these agreements are not public and that most likely companies did not pay social expenditures in accordance with those old agreements.

The Independent Administrator explained that majority of social expenditures were voluntary. Mandatory social expenditures are usually part of PSAs, however, Ukraine had not had acting PSAs since 2014 when Shell and Chevron withdrew their extractive activities. It was noted that social expenditures could have been recorded in a few license agreements from 1990-ies, however this was difficult to check. The IA added that neither PSAs, nor agreements are publicly accessible.

A couple of CSOs MSG members said that there were no mandatory social payments for private companies and that the extractive companies usually agreed with local communities on what are the social needs for the area and signed a social agreement. One CSOs MSG representative noted that SOEs didn't have an obligation for social expenditures, but usually supported social needs of local communities and governments in the extracting regions. For instance, Urkgazvydobubannya provided social support to the Lviv city in amount of UAH 9 m (USD 33 000).

Representatives of companies confirmed that they had no obligation for social expenditures. However, they voluntary signed social agreements and provided financial support to local governments and communities close to extractive sights. It was highlighted that companies would preferred to have social payments regulated by law.

With regards to the question why the oil and gas companies were less willing to provide the data on social expenditures, the civil society representatives explained that the extractive companies did not want other companies to know how much they paid to the communities. They were also cautious that the local communities could start demanding an increase in the social payments.

All stakeholders highlighted that from 2018 all extractive companies were mandated to pay 5% rent to the extractive regions and that this money would go to the local self-governments for community development.

## Initial assessment

The International Secretariat's initial assessment is that Ukraine has gone **beyond** towards meeting this requirement by covering the encouraged aspect of the requirement. While the EITI Report does not clearly state whether or not there are mandatory social expenditures, through consultations among stakeholders and through the third-party research it is confirmed, that there are no mandatory social expenditures. The MSG has disclosed discretionary social expenditures and decided to include them into

the reporting templates. The report provides unilateral aggregated disclosure of the discretionary social payments from the company side.

The MSG is encouraged to publicly clarify the existence of the mandatory social payments.

## SOE quasi fiscal expenditures (#6.2)

### Documentation of progress

Although included in the reporting templates of Annex 4 (pp. 261, 272, 281) quasi fiscal expenditures (QFE) are not further addressed in the EITI Report, nor has any discussions of such expenditures been identified in meeting minutes. However, as stated in the section “Transactions between SOEs and government (#4.5)”, the IMF Article IV Consultation with Ukraine (IMF, 2017) highlights some income taxes of SOEs are not directed to the state budget. Instead, these are diverted towards covering net losses of subsidiaries. According to IMF these payments are quasi-fiscal expenditures, but none of these are covered in the EITI Report.

Additional QFEs that seem most evident are mandatory or voluntary social expenditures that SOEs perform as part of their agreements with local government units, although they are not identified as such. In addition, other transactions of a quasi-fiscal nature may be included in section 7.5.3 on pages 196-208<sup>93</sup>. But the section does not provide any clear definition: Pages 196-198 explains generally that these transactions may contain expenditures of a partial or solely quasi-fiscal nature, but the numbers are presented as aggregates without precise definitions:

- Payments for other goods, works, services (including administrative services) provided to the entity by the state and municipal enterprises, institutions and organizations, state and local authorities in connection with prospecting, exploration and mining;
- Payments for other goods, works, services (including administrative services (budget classification codes – 22011500, 22010200 – 22011400, 22011700 – 22012000, 22012200 – 22012900) provided to the entity by the state and municipal enterprises, institutions and organizations, public authorities and local government, which are not related to mining activities;
- Cost of goods, works, and services provided for free by the entity to the state enterprises, institutions and organizations, state and local authorities in connection with prospecting, exploration and mining;
- Charitable contributions and donations provided by the entity to the state enterprises, institutions and organizations, state and local authorities in connection with prospecting, exploration and mining;
- Proceeds from repayment by the companies of fuel and energy complex and oil and gas industry to the State Reserve Agency of Ukraine of their debts and liabilities for tangible assets (including

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<sup>93</sup> This section is misstated as 7.5.2 in the English version of the EITI Report

value added tax liabilities arising from such settlements and from the penalties and interest for the use of resources), and the revenues of the State Reserve agency of Ukraine from disposal of the tangible assets returned to fuel and energy complex and oil and gas industry.

As stated these transactions are not further detailed in the tables disclosing the information and are presented as aggregates. It is therefore not possible to conclude which QFEs are covered. The EITI Report does clarify that only 10.1% and 10.9% of these payments were reconciled for 2014 and 2015, due to lacking or poor reporting of payments.

Lastly, the EITI Report does not amply describe the nature and process of household subsidies for utility-payments, in particular heating, and how SOEs are servicing or performing such payments (or receiving them) on behalf of the government. Such subsidies are included in the reporting templates of Annex 4, while Annex 5 includes subsidies pertaining to households' utility-payments, which seem to be reported in government budgets under budget code 14011100 (p. 284).

### Stakeholder views

Several stakeholders from all constituencies and the IA expressed concerns with this requirement due to the unclear nature of quasi-fiscal expenditures' definition in the EITI Standard, especially in terms of its overlap with mandatory or voluntary social expenditures. Consulting with the IA, they explained that QFEs were discussed during preparation of the 2014-2015 EITI Report, as reporting templates were updated to include such expenditures. The templates were updated based on Order of the Cabinet of Ministers of Ukraine No. 692 from August 2012, which defines and lists quasi-fiscal operations in Ukraine (Cabinet of Ministers of Ukraine, 2012). The list includes, amongst others, loans and state guarantees, other guarantees of SOEs or government agencies, debt obligations of SOEs, subsidies of utilities provided to households<sup>94</sup>, excess tax payments of companies, as well as social insurance and tax liability arrears and other liabilities of SOEs and government agencies. MSG meeting minutes did not confirm that this issue had been discussed explicitly, but included wording suggesting that the IA did present and explain the updated reporting templates to the MSG.

Government representatives explained that some income taxes of Naftogaz are not directed to the state, but towards covering loss of its subsidiaries. These payments were identified by the representatives as quasi fiscal expenditures, which conforms with the IMF's explanation highlighted previously. Civil society representatives confirmed the explanation that Naftogaz covers losses of its subsidiaries, as well as highlighting that the household utility-payments subsidy scheme is closely related to, if not directly, quasi-fiscal expenditures. However, we were unable to determine the true statutory rules or practices of this subsidy scheme beyond what is covered under *Transactions between SOEs and government* (#4.5).

### Initial assessment

The International Secretariat's initial assessment is that Ukraine has made **inadequate progress** towards meeting this requirement. There is insufficient information in the EITI Report to assess whether quasi-fiscal expenditures are sufficiently and comprehensively included in the EITI Report. Although several

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<sup>94</sup> Defined as the difference between market prices paid by Naftogaz for gas imports and their sales price to heating companies.



mandatory and voluntary social expenditures certainly are of a quasi-fiscal nature, they are not explicitly identified as such nor whether they are included in local government budgets. There are several diverging, although similar, explanations of subsidies and transactions between SOEs and other entities, but we have been unable to conclude whether these subsidies are indeed extra-budgetary. Still, documents regulating quasi fiscal operations. Transactions such as Naftogaz's debt liabilities and servicing of SOE losses are not included or sufficiently described in the EITI Report, although stakeholders from government and civil society maintain their existence and define these as quasi fiscal expenditures during consultations.

In line with Requirement 6.2, the MSG should clarify a definition of materiality with regards to quasi-fiscal expenditures by SOEs, including SOE subsidiaries and joint ventures. The MSG should ensure disclosure of quasi-fiscal expenditures are according to requirement 6.2. This includes the nature of the subsidy scheme for household utility-payments, and the role of state-owned enterprises. It also includes the financial relationship between the SOE and its subsidiaries, including joint ventures, especially pertaining to coverage of losses.

To further ensure disclosure is comprehensive, the MSG may wish to define which expenditures are of a quasi-fiscal nature using national laws and regulations, e.g. as defined by order no. 692 of the Cabinet of Ministers of Ukraine (Cabinet of Ministers of Ukraine, 2012).

## Contribution of the extractive sector to the economy (#6.3)

### Documentation of progress

Share of GDP: Section 5.10 of the EITI Report presents the impact of extractive industries on the economy of Ukraine. As a first macroeconomic indicator, the report clearly includes the role of extractive industries as share of Gross Domestic Product (GDP) for 2015. Figure 5.10-1 includes both absolute estimates of extractive industries' gross value added and its corresponding percentage share relative to total GDP.

The methodology of the estimate is described by using the internationally comparable Statistical classification of economic activities in the European Community (NACE). The term "extractive industries" is described as corresponding to the economic activity "Mining and quarrying" which also corresponds to the recommendations of the IMF. However, although not specifically required by the EITI Standard, the report does not clarify whether it is based on current or constant basic prices, which matters for time-series comparability. Furthermore, the report also includes more specification of how these estimates may be broken down further in figures 5.10-2 and 5.10-3.

The report does not comment on informal sector activities, nor any estimates of such, in Ukraine. However, as stakeholder consultations reveal below, significant activities of such nature do exist, including estimates of its size.

Government revenues: Total government revenues, including those outside of the scope of reconciliation are presented in table 7.2-1, page 167, of the EITI Report. The table shows for total government revenues from extractive companies for both 2014 and 2015, including the percentage share of total tax collection of Ukraine's consolidated budget and revenues of their pension fund. The report does not specify which

methodology was used for the estimates. In addition to this information, government revenues are also broken down by regions, in tables 5.12-1 and -2 on pages 112-115. This information is also further broken down also by sub-sectors in tables 5.12-3 and -4. Lastly, total government revenues from extractive industries are also presented by revenue stream (figures 7.2-4 and -6), as well as by sub-sector (7.2-3 and -6).

Exports: Export data is presented in section 5.10.4. It covers crude oil and gas condensates, natural gas, coal, and iron. These are also shown as shares of total exports, however estimates for extractive industries as a whole, or for the other sub-sectors (titanium and manganese) are not covered in the section nor does the report indicate why that is.

Employment: The report also contains estimates on employment. Figures 5.10-9 to 5.10-12, pp. 96-98, cover i) estimates of average number of full-time employees exist in extractive industries for 2010-2015, ii) as a share of the all full-time employees in Ukraine, and iii) as a share of employees in the manufacturing sector.

The numbers are also broken down by employees in the coal and lignite sectors, and other extractive industries. Figure 5.10-11 and -12 present average number of full-time employees by different regions. An additional comparison is presented of average monthly salaries of employees in extractive sector as a whole, the coal and lignite sector, manufacturing sector, and Ukraine as a whole (Figure 5.10-13, page 99). Further analyses of wage-levels can also be found on page 100 showing that employees in the extractive sectors earn significantly more money on average, compared to the rest of the sector.

Location: The key areas of production are highlighted under the various sections referred to under Overview of the extractive sector, including exploration activities (#3.1) in this report. Please refer to this section for more information.

Lastly, the report also includes estimates for investments in extractive industries. This includes share of capital investments for the economy in its entirety (2010-2015), as well as government capital investments only (2014-2015). The former provides estimates by sub-sectors and by region<sup>95</sup>.

## Stakeholder views

Stakeholders did not present any specific reservations regarding this requirement. When confronted with questions regarding the informal sector of Ukraine's extractive sector, stakeholders from all constituencies could not recall discussions of this sub-requirement. One government representative did identify that the legality of artisanal and small-scale mining (ASM), including the informal sector differed from region to region (oblasts).

Upon request, the national secretariat provided a concept note for a project including the informal sector and ASM, in the amber and coal subsectors. From the document a misunderstanding of the requirement is apparent, as UAEITI did not think information the informal sector nor ASM was required. The concept

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<sup>95</sup> See figures 5.10-4 to 5.10-8, pp. 93-95

note does provide some indications of the importance of these subsectors, among others that illegal extraction of amber exceeds legal production approximately 200 times. For coal, an estimated 7 million tons are mined illegally each year or 7 percent of annual production. None of this information included in the EITI Report nor in MSG meeting minutes.

### Initial assessment

The International Secretariat's initial assessment is that Ukraine has made **meaningful progress** toward meeting this requirement. The EITI Report provides the sufficient amount of information regarding the extractive sectors contribution for gross domestic product, exports, government revenues and employment, as well as investments. It also provides an impressive analysis of wages in the sectors in relation to Ukraine as a whole. The key areas of production in Ukraine are also highlighted in the report.

Due to the disclosure of this information, it could be argued that it warrants an assessment of satisfactory progress toward the requirement, even if the EITI Report does not address the informal sector of Ukraine (nor artisanal and small-scale mining (ASM)). But as stakeholder consultations and documents illustrated that significant informal activities do take place in certain regions of Ukraine and that estimates are available; the International Secretariat deems that the disclosures are not sufficient.

The MSG should clarify the availability of, and estimate, informal sector activity. This includes but is not necessarily limited to artisanal and small-scale mining, as per Requirement 6.3.

Table 6: Summary initial assessment table: Social and economic spending

EITI provisions	Summary of main findings	International Secretariat's initial assessment of progress with the EITI provisions (to be completed for 'required' provisions)
Social expenditures (#6.1)	There does not seem that mandatory social expenditures exist in Ukraine. Reporting on discretionary social payments is encouraged but not required by the EITI Standard and progress with this requirement should not have any implications for a country's EITI status.	Beyond
SOE quasi fiscal expenditures (#6.2)	There is insufficient information in the EITI Report to assess whether quasi-fiscal expenditures are sufficiently and comprehensively included in the EITI Report. Although several mandatory and voluntary social expenditures certainly are of a quasi-fiscal nature, they are not explicitly identified as such nor whether they are included in local government budgets. There are several diverging, although similar, explanations of subsidies and transactions between SOEs and other entities, but we have been unable to conclude whether these subsidies are indeed extra-budgetary. Still, documents regulating quasi fiscal operations. Transactions such as Naftogaz' debt liabilities and servicing of SOE losses are not included or sufficiently described in the EITI Report, although stakeholders from government and civil society maintain their existence and define these as quasi fiscal expenditures during consultations.	Inadequate progress
Contribution of the extractive sector to the economy (#6.3)	The EITI Report provides the sufficient amount of information regarding the extractive sectors contribution for gross domestic product, exports,	Meaningful progress

	<p>government revenues and employment, as well as investments. It also provides an impressive analysis of wages in the sectors in relation to Ukraine as a whole. The key areas of production in Ukraine are also highlighted in the report.</p> <p>Due to the disclosure of this information, it could be argued that it warrants an assessment of satisfactory progress toward the requirement, even if the EITI Report does not address the informal sector of Ukraine (nor artisanal and small-scale mining (ASM)). But as stakeholder consultations and documents illustrated that significant informal activities do take place in certain regions of Ukraine and that estimates are available; the international Secretariat deems that the disclosures are not sufficient</p>	
<p>Initial conclusions and recommendations:</p> <ol style="list-style-type: none"> <li>1. The MSG is encouraged to publicly clarify the existence of the mandatory social payments.</li> <li>2. In line with Requirement 6.2, the MSG should clarify a definition of materiality with regards to quasi-fiscal expenditures by SOEs, including SOE subsidiaries and joint ventures. The MSG should ensure disclosure of quasi-fiscal expenditures are according to requirement 6.2. This includes the nature of the subsidy scheme for household utility-payments, and the role of state-owned enterprises. It also includes the financial relationship between the SOE and its subsidiaries, including joint ventures, especially pertaining to coverage of losses.</li> <li>3. To further ensure disclosure is comprehensive, the MSG may wish to define which expenditures are of a quasi-fiscal nature using national laws and regulations, e.g. as defined by order no. 692 of the Cabinet of Ministers of Ukraine (Cabinet of Ministers of Ukraine, 2012).</li> <li>4. The MSG should clarify the availability of, and estimate, informal sector activity. This includes but is not necessarily limited to artisanal and small-scale mining, as per Requirement 6.3.</li> </ol>		

## Part III – Outcomes and Impact

### 7. Outcomes and Impact

#### 7.1 Overview

This section assesses implementation of the EITI Requirements related to the outcomes and impact of the EITI process.

#### 7.2 Assessment

##### Public debate (#7.1)

###### Documentation of progress

The government, companies and civil society have all contributed to promoting the EITI and ensuring that EITI data contributes to public debate, both in the framework of the MSG and outside.

###### Comprehensibility:

The UA-EITI Secretariat has led communications efforts, although all three stakeholder groups have been actively engaged in EITI-related communications. The secretariat has an active communication strategy through engagement with print, broadcast and online media, publishing communication materials ranging from summary EITI Reports to infographics both on the UA-EITI website and in hard copies. The civil society MSG members have prepared two short videos, including one<sup>96</sup> in November 2015 explaining the EITI process and its relation to the anti-corruption agenda and the second one<sup>97</sup> in December 2015, explaining the findings of the first EITI report. The secretariat frequently updates the UA-EITI website, covering all EITI events and up-to-date news under its news section<sup>98</sup>.

The UA-EITI website contains key documents related to EITI implementation. The 2013 EITI Report and its Summary report are available in Ukrainian, Russian and English and the 2014-15 EITI Report and its Summary report are available in Ukrainian and English. A popular version of the reports is available and shows the main facts and updates from the extractive sector in a user-friendly format (presentation with infographics elements) and makes the report appealing to a wider audience<sup>99</sup>. The popular version of the report is available both in PDF format and in slides.

Summary data for 2014 and 2015 were shared with the International Secretariat in March 2017. All EITI

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<sup>96</sup> <http://eiti.org.ua/2015/11/dobuvai-pravdu-dixi-group-vypustyla-videorolyk-prysvyachenyi-ipvh/>

<sup>97</sup> [https://www.youtube.com/watch?time\\_continue=2&v=ku3dlsDYKWw](https://www.youtube.com/watch?time_continue=2&v=ku3dlsDYKWw)

<sup>98</sup> <http://eiti.org.ua/category/novyny/>

<sup>99</sup> [https://issuu.com/romannitsovykh/docs/uaeiti\\_2014-2015\\_ukr-eng\\_short](https://issuu.com/romannitsovykh/docs/uaeiti_2014-2015_ukr-eng_short)

Reports and their annexes are available on the national EITI website<sup>100</sup> and in hard copies at the MECI.

The UA-EITI Secretariat initiates interviews and blogs with various stakeholders under the 'expert comments' website column.<sup>101</sup> According to the Annual Progress Report, UA-EITI conducted over 74 communication events in various regions in 2016 (UAEITI, 2017).

**Promotion:** The UA-EITI Secretariat and MSG have actively promoted EITI information through press briefings, dissemination and outreach events, stakeholder discussions, social media and capacity building workshops. The 2016 APR provides an account of numerous articles and media efforts that have taken place in 2016 (UAEITI, 2017). The secretariat publishes regular press releases<sup>102</sup> on its website and works closely with online media outlets, such as ua-energy.org, epravda.com.ua, etc. Civil society representatives together with the communication team of the UA-EITI initiated at least ten TV programs on the issue related to the extractive industries transparency; all of them are available online<sup>103</sup>. MSG civil society members prepared a series of brochures and infographics<sup>104</sup> to promote adoption of the draft law on Transparency in the Extractive Industries.

The UA-EITI National Conferences held in December 2015 and February 2017 have also provided a key multi-stakeholder platform for debate over the findings of the UA-EITI Reports, canvassing opinions and socialising the annual work plan. The MSG has held a pre-validation workshop and analysed the 2014-15 EITI Report.

The UA-EITI Secretariat and MSG members have actively undertaken outreach both in the capital Kyiv but more importantly in the main extractive regions. As a part of communication strategy, the UA-EITI together with relevant stakeholders held 74 dissemination and outreach activities in Kyiv and regions in 2016 and at least 50 events in January-July 2017<sup>105</sup>; all of them are covered in media (UAEITI, 2017) (Annex 1). The events held in the regions helped communicating findings of the two EITI Reports, and led to group discussions around specific topics, such as subnational payments, social expenses, impact from the extractive industries on local communities and tensions between companies and communities.

**Public accessibility:** The UA-EITI Secretariat has been proactive in ensuring the public accessibility of EITI information both through online channels and in hard copy through dissemination and outreach events. The 2014-15 EITI Report include annexes in excel-format. Active official social media accounts are maintained on Twitter<sup>106</sup> and Facebook<sup>107</sup>. Secretariat staff makes use of the news column on its website to keep stakeholders updated on the EITI events and activities and to document the impact.

#### Open data policy:

In December 2016 UAEITI published its open data policy (UAEITI, 2016), which covers all the required

<sup>100</sup> <http://eiti.org.ua/biblioteka/>

<sup>101</sup> <http://eiti.org.ua/expert-comments/>

<sup>102</sup> <http://eiti.org.ua/category/novyny/ofitsiino/>

<sup>103</sup> <https://drive.google.com/drive/folders/0BzQ1g61NKgtDRkpTT190U1NYNFk>

<sup>104</sup> <https://drive.google.com/drive/folders/0BzQ1g61NKgtDRkpTT190U1NYNFk>

<sup>105</sup> <https://drive.google.com/drive/folders/0BzQ1g61NKgtDRkpTT190U1NYNFk>

<sup>106</sup> <https://twitter.com/UaEiti>

<sup>107</sup> <https://www.facebook.com/UAEITI>



information of the EITI Standard. Through the policy UA-EITI commits to convert key data of their EITI Reports to open formats, in this case Excel files, and publish these on their website. The policy does not indicate whether this will also be applicable for previous reports, or solely for new publications, however it does indicate that the data will be made available as quickly as possible after publication of a new report, and will be updated annually. The policy also identifies that the data will be available “with reference to the source. In this regard, “use” of data means use for analysis, elaboration and distribution of new works based on data.” (UAEITI, 2016).

Ukraine has also made strides in open disclosures in parallel to the EITI. Although not always available in open data formats, both the license registry Geoinform of Ukraine (2017) and the beneficial ownership registry in Ukraine are publicly disclosed. The platforms are interactive and searchable but only parts of the information are available in open formats such as xls or csv<sup>108</sup> files. The national secretariat does disclose information in open formats. On its website, there are several forms of data which is available for download, mostly pertaining to disclosures relevant for the reconciliation process (UAEITI, 2017). There are no accompanying descriptions which could assist in understanding the data, nor does UAEITI provide examples of usage.

*Contribution to public debate:* Press coverage of UA-EITI activities has grown significantly over time. The UA-EITI communication team constantly monitors the media coverage, preparing monthly analysis<sup>109</sup> reports of the publications, TV news and events. There is evidence of active use of EITI data by each of the three stakeholder groups. Civil society appears to have been the most active user of EITI data, from establishing an online energy map<sup>110</sup> to drawing on EITI data to support broader energy reforms<sup>111</sup>.

Industry has drawn on EITI data to decrease tensions with local communities and to engage with new business partners from the EU. The ACC, that coordinates company constituency, has been including the EITI into the its annual White Paper on Reforms in the Oil and Gas Sector since 2014 (American Chamber of Commerce in Ukraine, 2014-2015), (American Chamber of Commerce in Ukraine, 2016).

Inspired by the open data policy, approved by the MSG, the MECI has started disclosing statistical data<sup>112</sup> on coal and electricity on governmental portal<sup>113</sup>. The MECI considers the EITI as one of its most successful projects<sup>114</sup> and uses the EITI data both for attracting foreign investors and for building trust with local communities in the extractive regions. In particular, the 2014-15 EITI Report has become the only reliable source for the coal mining data since the beginning of the conflict in the mining regions of Donetsk and Luhansk. The EITI is an integral part of the government’s Open Government Partnership action plan (OGP Ukraine, 2016).

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<sup>108</sup> CSV – Comma Separated Value file

<sup>109</sup> <https://drive.google.com/drive/folders/0BzQ1g61NKgtDRDPZmFjanRTYU0>

<sup>110</sup> <http://map.ua-energy.org/en>

<sup>111</sup> <http://dixigroup.org/eng/comments/yak-rozkryttya-kontraktiv-vidobuvnikh-kompaniy-dopomozhe-derzhavi-biznesu-i-miscevim-gromadam/>

<sup>112</sup> <http://eiti.org.ua/2017/01/initsiatyva-z-rozkryttya-danyh-minenerhovuhillya-dala-pershi-rezultaty/>

<sup>113</sup> [http://mpe.kmu.gov.ua/minugol/control/uk/publish/officialcategory?cat\\_id=245171668](http://mpe.kmu.gov.ua/minugol/control/uk/publish/officialcategory?cat_id=245171668)

<sup>114</sup> Natalya Boyko, Deputy Minister of Energy and Coal, [http://mpe.kmu.gov.ua/minugol/control/uk/publish/article?art\\_id=245223176](http://mpe.kmu.gov.ua/minugol/control/uk/publish/article?art_id=245223176)

UA-EITI and CSO MSG members have also undertaken outreach to members of the Parliament, including hosting legislators' roundtables and public hearing on their role in the EITI in October 2016<sup>115</sup> and February 2016<sup>116</sup> and bilateral meetings with select representatives and MPs, particularly in relation to work on EITI-specific legislation and broader energy<sup>117</sup> and anti-corruption reforms.

### Stakeholder views

*Comprehensibility:* The UA-EITI Secretariat explained that all EITI related events were announced and covered in the news items published on the website. It was noted that the website was kept up to date, but was old and technically limited. The secretariat was looking for support to upgrade the website. All the MSG members confirmed that enjoyed the data accessibility from the EITI national website. The civil society representatives from the regions aid that the EITI Report served as the only source of reliable data from the extractive industries.

*Promotion:* Civil society representatives explained that GIZ supported development of the communication strategy for 2016-2017. The communication strategy considers the EITI workplan activities. The progress with the implementation objectives is being regularly assessed. Most of the work with communities was funded by GIZ and USAID. There are five regional NGOs that coordinate outreach and dissemination activities in respective regions. The UA-EITI Secretariat explained that to implement the communication strategy, GIZ hired a PR consultant that coordinates the work. These efforts were considered extremely helpful and well managed. It was noted that regional events usually included stakeholders from all constituencies, in particular extractive companies, local governments, NGOs and communities. The communication managers said that collected a lot of positive feedback from the dissemination and outreach events in the regions. It was noted that citizens are mostly interested in the topic such as the ownership of companies, environmental issues, social responsibilities and practical issues.

UA-EITI Secretariat staff brought up a story from a large extractive region in the western Ukraine – Ivano-Frankivsk. The Governor of the region asked the Dean of the Extractive Industries University to advise on how to keep local companies accountable, how to track local rent payments (5%) and how to find the extractive companies' revenue data from their region in order to hold an evidence-based debate in the local parliament? Eventually, the Dean introduced the EITI as the most suitable and credible tool and explained how it could address the governor's query.

All the MSG members agreed that the outreach and dissemination activities in Kyiv and extractive regions targeted relevant stakeholders and that the EITI reports are known and being used on the local level. The government representatives noted that the EITI became a platform for an informed debate and it was considered as trustworthy and credible mechanism for anti-corruption in extractive industries. A company representative noted that the biggest tax-paying extractive companies supported the EITI and in February

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<sup>115</sup> <http://eiti.org.ua/2016/10/zakonoproekt-4840-rozshyryuje-perelik-informatsiji-scho-maje-buty-dostupna-publichno/>

<sup>116</sup> [http://dixigroup.org/eng/news/obgovorennya\\_komitet/](http://dixigroup.org/eng/news/obgovorennya_komitet/)

<sup>117</sup> [http://dixigroup.org/eng/news/uryad-maye-zvazhen-pidtyti-do-vidatkiv-na-subsidii--doslidzhennya-dixi-group-/  
/](http://dixigroup.org/eng/news/uryad-maye-zvazhen-pidtyti-do-vidatkiv-na-subsidii--doslidzhennya-dixi-group-/)

2017 the CEO of PJSC Ukrgezvydobuvannya attended the EITI National Conference.

The Independent Administrator commented that the UA-EITI Secretariat worked with business associations and explained them the benefits of EITI implementing the EITI. EY conducted a workshop on how to fill in the reporting templates for oil, gas and mining companies.

*Public accessibility and open data:* UA-EITI secretariat staff commented that the MSG asked for the data in open format and the Independent Administrator included annexes in excel-format for the second EITI Report covering 2014 and 2015. All the MSG members agreed that EITI Reports were publicly available and widely consulted on the UA-EITI website. UA-EITI secretariat staff explained that all relevant documentation was continuously uploaded on the website, including EITI Reports and their summaries. The secretariat noted that the 2014-15 EITI Report and its popular summary were published in Ukrainian and English due to the limited funding.

*Public debate:* The civil society representatives said that the work with communities in the extractive regions started three years ago. They have noticed the progress, in particular the interest to the EITI increased and local communities became well aware of their rights. It was noted that the local communities started to be regularly in touch with the MSG CSOs with regards to the extractive industries issues in their regions and that some of the old conflicts with the companies were resolved.

A communication manager highlighted that there were 74 regional events held in 2016 and 50 events in Q1 and Q2 of 2017. The outreach and dissemination activities also include events in the state universities in Ivano-Frankivsk, Poltava and Kharkiv and that the UA-EITI Secretariat was invited to conduct a series of lectures on the EITI.

Few government representatives noted that SFS and MoF were the most active participants of the regional outreach and dissemination events. It was noted that once a deputy Minister of Ecology attended an EITI conference in Lviv – another extractive region. Deputy Minister of Energy and Coal Industry Natalia Boyko together with the MSG members took part in the EITI peer learning visit to Germany. UA-EITI Secretariat commented that the government representatives are willing and interested to travel to the regions for the EITI events, but it rather bureaucratic procedure for them.

Some media representatives said that were familiar with the EITI and used it for the stories on energy reforms and European transparency practice, however, a few journalists found the EITI data out of date.

### Initial assessment

The International Secretariat's initial assessment is that Ukraine has made **satisfactory progress** in meeting this requirement. The UA-EITI Reports are comprehensible, actively promoted through varied channels (including print, online and through active outreach), publicly accessible and have tangibly contributed to public debate on the extractive industries in Ukraine. In the Secretariat's view, Ukraine has gone beyond the minimum requirements by broader legislative reforms, proactive sub-national outreach and extensive work with local communities. The three stakeholder groups have also actively contributed to dissemination of the EITI reports.

## Data Accessibility (#7.2)

### Documentation of progress

Ukraine is making steady progress in data accessibility. As of December 2016, UAEITI published their open data policy, committing to publishing key information of EITI reports in open data formats. Revenue data for the 2014-2015 EITI Report is published on the national secretariat's website<sup>118</sup>. While the report includes national budget-codes associated with each of the revenues throughout the document, the data does not provide such information.

The UAEITI have submitted summary data for 2014 and 2015 to the International Secretariat. The submitted summary data does employ the international standard framework for classifying government revenues; the *Government Finance Statistics Manual 2014* (IMF, 2017).

Neither the EITI Report nor supporting documentation presented a summary and comparison of each revenue stream to total government revenues. However, the EITI Report does contain some numbers which are compared, for different sectors and regions, and revenues are distinguished for each tier of government (p.133-146). UAEITI have also created summary reports, both for their first (2013) and second (2014-2015) EITI Reports, bringing the information in both English and Ukrainian to less than 40 pages (UAEITI, 2017a). The full report is also available in both English and Ukrainian.

One of the key areas addressing data accessibility in the EITI Standard is 7.2.c, recommending national secretariats and MSGs to consider automated systems for online disclosures. The APR highlights this a priority which UAEITI have brought up with potential funding partners (UAEITI, 2017, p. 5), and the open data policy explicitly identifies the inclusion of such a platform, including that it may be integrated in e-service projects currently underway (UAEITI, 2016). The EITI Report itself recommends implementing an electronic system to standardise reporting for both companies and for the Ukrainian government (UAEITI, 2017b, pp. 218-219).

On capacity building and awareness, the APR lists 74 events (excluding four MSG meetings). The majority involve representatives from both government agencies and NGOs, while some included analyses targeting journalists and academics. Some events were also dedicated for companies. Even so, the APR provides an impressive track-record for raising awareness.

### Stakeholder views

All stakeholders confirmed the efforts made to make EITI data more accessible and to disseminate the information more broadly. However, not all stakeholders were aware that this information was provided in open formats. Improving accessibility was also identified as an area to focus on going forward in particular on data accessibility for several years enabling intertemporal analysis. One stakeholder from the government highlighted that Ukraine is compliant with international frameworks and standards, as they report to international organisations, but could not identify any attempt at reaching out to reporting agencies on the issues of international standardisation or classification of data. When consulting media-

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<sup>118</sup> <http://eiti.org.ua/en/library/>

representatives, the main reflections were that EITI data is outdated, decreasing the relevance of the information for current news stories. They called for improving the timeliness of EITI data, especially in production, exports and revenues.

Still, representatives from all constituencies explicitly identified the national secretariat as instrumental in arranging sub-national events. Several events were highlighted by all constituencies in which the national secretariat not only involved company, government and civil society stakeholders at the national level but also engaging their associated counterparts in the regions.

Several ministries and agencies in Ukraine's government are undergoing multiple changes or are preparing for them. The Ministry of Energy and Coal Industry, MECl which hosts the national secretariat, was identified as spearheading a strategy involving digitisation as a major area of focus. Related to their efforts in ensuring more digitised disclosures as well as reporting systems, there is a ministry-wide review of which reporting requirements currently exist, with the aim of simplifying and streamlining such activities. This provides an opportunity for the UAEITI to latch on to wider and existing reporting structures.

### Initial assessment

Requirement 7.2 encourages MSGs to make EITI Reports accessible in open data formats. The UAEITI have done so both at the national and international level. However, this requirement is not assessed in determining compliance with the EITI Standard. It is still important to recognise that all encouraged provisions under this requirement have either been met or are under current consideration by the MSG and national secretariat in Ukraine.

## Lessons Learned and follow-up on recommendations (#7.3)

### Documentation of progress

Annex 2 of the 2016 Annual Progress provides an overview of the MSG's responses to the recommendations from the 2014-15 EITI Report. The annual progress report lists 12 recommendations of which six recurred from the first EITI Report, namely strengthening assurance procedures for the company data; introducing sanctions for non-reporting; revising a materiality threshold for discrepancies; disclosing license agreements and contracts; reconciling the payments on accrual basis; and adopting an EITI Law. The recommendations relate both to EITI Requirements and to broader improvements in government systems, including:

- Adopting the draft Law on Transparency of Information in the Extractive Industries;
- Introducing sanctions for failure to report;
- Enabling access to information on titanium reserves and opening contracts;
- Reviewing materiality threshold for discrepancies;
- Improving timeline for preparing the EITI report;
- Introducing unified methodology for evaluation of the natural resources in accordance with the global standard classification;
- Encouraging companies to reconcile financial data on accrual basis with government's cash

basis;

- Auditing financial statements of companies;
- Providing sign-off letters or any other relevant assurance;
- Introducing regulatory amendments to enable public access to monitoring allocation of the extractive revenues to the State Budget and local budgets and how they are spent;
- Introducing online reporting system;
- Evaluating indirect contribution of extractive industries for better overview of the role of the extractive industries.

On 29 May 2017, the MSG members discussed all the recommendations from 2014-15 EITI Report and recurring recommendations from the 2013 EITI Report to track the level of progress or its absence. The MSG meeting minutes note that most of the recommendations were addressed (UA-EITI, 2017g). The APR provides the progress towards addressing the recommendations. In particular, the majority of the recommendations from both reports were included into the draft Law on Transparency of Information in the Extractive Industries (EITI law) that was submitted to the Parliament. For instance, the draft law introduces mandatory reporting under the EITI Standard, system of penalties for non-reporting, contract transparency, etc. The MSG noted significant progress on enabling access to the licensing data and geological data as a result of a close collaboration with the line ministries. A recurring recommendation on reviewing the materiality threshold for discrepancies was addressed by the MSG on 6 September 2016, establishing a 5% threshold for discrepancies in the 2014-15 EITI Report (UA-EITI, 2016c). All of discrepancies in the 2014-15 EITI Report were below the materiality threshold and thus the IA was not tasked to investigate them.

The APR also highlights that some of the recommendations from the 2013 EITI Report were addressed, in particular on conducting workshops on reporting procedures for the extractive companies and government; preparing guidance on filling in the reporting templates; and making the EITI Reports more timely. It was noted that some of the extractive companies have already started reconciling their accrual based financial statements with the cash revenues recorded at the SFS.

The 2017 Work Plan includes activity on “MSG’s discussion on implementing the recommendations from the EITI Report” (UA-EITI, 2017f). In addition to this, Activity 1.3 of the work plan on Other events in the scope of EITI implementation in Ukraine, shows the MSG’s plans to draft recommendations on broader reforms in the extractive sector based on the outcomes of the next EITI Report, including investigating the discrepancies, and submitting their proposals to the government (deadline December 2017) (UA-EITI, 2017f).

During the MSG meeting on 1 February 2017, the IA raised an issue of investigating discrepancies and that the SFS was convinced in the accuracy of the data they had provided. In cases where companies’ data differed, the IA found it challenging to explain (UA-EITI, 2017g).

## Stakeholder views

All the MSG members confirmed that they reviewed recommendations from the EITI reports and included them into the draft on Transparency of Information in the Extractive Industries. It was noted that with regards to some recommendations, the MSG followed up with the relevant government entities, for instance the State Service of Geology and Mineral Resources and SFS.

Representatives from the company constituency confirmed that some of the extractive companies started following the recommendation on reconciling their financial statements with the government's cash basis accounting.

A civil society representative pointed out that the MSG held a separate discussion on the recommendations and agreed on how to address them in the next report.

The national secretariat noted that following up on the recommendations from the EITI reports was not a one meeting action, but that the MSG and ad-hoc working groups carefully considered and discussed the recommendations with the IA. It was also noted that some of the recommendations related to the technical adjustments were easy to address. On the other hand, a recommendation on creating an online reporting system was welcomed by the MSG, but would require significant funding.

A representative of SFS explained that one of the main reasons for discrepancies was a difference in accounting systems and that the SFS reported on cash basis whilst companies reported on accrual basis. It was also noted that the SFS did not receive any official requests to explain discrepancies with what the companies reported.

The IA admitted there could have been done more towards investigating discrepancies, but the delays with the company reporting left too little time.

### Initial assessment

The International Secretariat's initial assessment is that **Ukraine** has made **satisfactory** progress in meeting this requirement. The APR and MSG meeting minutes show that the MSG has taken steps to act upon lessons learnt, to identify weaknesses of the EITI process and to consider the recommendations for improvements from the IA. Although the MSG did not fully investigate and address the causes of discrepancies, the MSG was aware of the issue and added it into the workplan for 2017.

To further strengthen implementation, the MSG in consultation with the government should follow-up to act on lessons learned, to identify, investigate and address the causes of discrepancies.

## Outcomes and impact of implementation (#7.4)

### Documentation of progress

UA-EITI has produced four annual activity reports covering 2013-2016, published in both Ukrainian and English, available on the UA-EITI website<sup>119</sup>. The MSG approved the 2016 annual progress report and published it on the UA-EITI website in June 2017.

The annual progress report includes a summary of activities undertaken in 2016. The report highlights that EITI implantation was focused on the following areas: improving the legislative and regulatory basis

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<sup>119</sup> <http://eiti.org.ua/biblioteka/>



for EITI implementation in Ukraine; continuing to carry out EITI activities in the regions; and publishing the second EITI Report (pp. 3-4). Annex 1 lists 74 dissemination and outreach activities and other related events carried out in 2016 with short descriptions and links to press releases and news items (UAEITI, 2017).

The APR records MSG's efforts towards considering the encouraged EITI Requirements, such as: revenue management and expenditure, transportation payments, discretionary social expenditures, ad-hoc sub-national transfers, beneficial ownership and contracts. With regards to the assessment of performance against EITI requirements, the APR provides a table where the progress against meeting each EITI requirement is assessed (pp. 10-11) (UAEITI, 2017b). However, the requirement on quasi-fiscal expenditures is not addressed in the 2014-15 EITI Report and the APR does not provide specific actions to improve progress.

Annex 2 of the APR provides an overview of the MSG's responses and progress made in addressing the recommendations from the 2013 and 2014-15 EITI Reports. It also indicates the level of progress on each recommendation and provides relevant references to the EITI Report. However, the level of progress is lacking more detailed information on next steps for some recommendations.

There were seven objectives set out for the 2016 work plan, such as: building capacity for the MSG and the national secretariat; aligning legislation with the EITI Standard; publishing the second EITI Report; disclosing information on beneficial ownership; and becoming EITI compliant county (pp. 5-6). The APR comments on the level of completion of the work plan activities and highlights outstanding issues. The APR provides the MSG's self-assessment of the impact and outcomes of implementing the EITI objectives (pp. 3-5).

The APR includes a narrative account of strong and weak aspects of the EITI process in Ukraine (pp. 12-13). It is mentioned that the scope of the second EITI Report was significantly widened and includes information on metal, manganese and titanium ores; data is disaggregated by company; more detailed information on regional level is provided. The APR highlights other aspects of EITI implementation in Ukraine, such as actions taken to increase stakeholder engagement and public debates. The APR provides a commentary on how to address outstanding weaknesses. It notes that most of the activities aimed at raising awareness and understanding of the EITI reports among the citizens.

The APR covers the progress with implementing the Beneficial Ownership Roadmap. The report highlights Ukraine's outstanding progress towards beneficial ownership transparency, however notes of a number of shortcomings and how the MSG plans to address them. The APR also mentions that the beneficial ownership disclosure is included into the second EITI Report.

Total costs of implementation are covered in a brief summary of costs and donors. The Section on general expenditures provides details on the World Bank funding and lists other donors that supported the implementation process and the amounts of funding.

The report is concluded with a comment that the MSG members shared the APR within their constituencies. It indicates that four MSG meetings took place in 2016.

## Stakeholder views

There was consensus amongst stakeholders consulted that EITI implementation had had a clear impact in Ukraine, albeit to varying degrees. UA-EITI secretariat staff noted the use of the annual progress report as one of the MSG's monitoring and evaluation tools for EITI implementation.

The MSG members explained that the national secretariat normally prepared a draft of the progress report and circulated for the comments. Company representatives acknowledged their contributions to the APR, however did not express any particular comments on the use of the annual progress reports. A high-level government official said that the EITI was a green light for foreign investors and provided access to the data.

Civil society representatives provided a detailed feedback with regards to the impact achieved and the areas that needed further work. In particular, it was highlighted that the EITI was well used for informing citizens in the extractive regions; introducing wider reforms, such as sub-national royalty payment; providing a platform for multi-stakeholder informed debate; decreasing local tensions with the extractive companies; contributing to the local self-governance; and keeping the government and companies accountable.

Representatives from industry said that joining the EITI was one of the first actions of the government towards transparency in the extractive industries. They commented that the EITI set up a transparency trend that became popular to follow. Many representatives confirmed that used the EITI Reports for their benefits – presentations, meetings with partners and investors. Some representatives that used the EITI Reports to check the data from the State Fiscal Service and found some discrepancies in the revenues received that later were settled with SFS.

## Initial assessment

The International Secretariat's initial assessment is that **Ukraine** has made **satisfactory progress** in meeting this requirement. The MSG has reviewed progress and outcomes of implementation on a regular basis, including by publishing annual progress reports over the past four years. The APR notes the strengths and weaknesses of the EITI process in Ukraine. It highlights the main impact stories and addresses recommendations from the previous EITI Report.

To further strengthen implementation, the MSG may wish to consider undertaking an impact assessment, in order to determine the extent to which the EITI has contributed to improving public financial management and governance of the mining, oil and gas sectors.

Table 7: Summary initial assessment table: Outcomes and impact

EITI provisions	Summary of main findings	Validator's recommendation on compliance with the EITI provisions (to be completed for 'required' provisions)
Public debate (#7.1)	The UA-EITI Reports are comprehensible, actively promoted through varied channels (including print, online and through active outreach), publicly accessible and have tangibly contributed to public debate on the extractive industries in Ukraine. In the Secretariat's view, Ukraine has gone beyond the minimum requirements through active subnational outreach and dissemination. The three stakeholder groups have also actively contributed to dissemination of the EITI reports.	Beyond
Data accessibility (#7.2)	Ukraine's EITI data is available in machine readable formats through UAEITI's website and the EITI global website. The MSG have published summary reports in multiple languages and is currently exploring opportunities for automated or more timely disclosures.	Not applicable
Lessons learned and follow up on recommendations (7.3)	The MSG has taken steps to act upon lessons learnt, to identify weaknesses of the EITI process and to consider the recommendations for improvements from the IA. Although the MSG did not fully investigate and address the causes of discrepancies, the MSG was aware of the issue and added it into the workplan for 2017.	Satisfactory progress
Outcomes and impact of implementation (#7.4)	The MSG has reviewed progress and outcomes of implementation on a regular basis, including by publishing annual progress reports over the past four years. The APR notes the strengths and weaknesses of the EITI process in Ukraine. It highlights the main impact stories and addresses recommendations from the previous EITI Report.	Satisfactory progress
Secretariat's recommendations:  1. To further strengthen implementation, the MSG may wish to consider undertaking an impact assessment, in order to determine the extent to which the EITI has contributed to improving public financial management and governance of the mining, oil and gas sectors.		

2. To further strengthen implementation, the MSG in consultation with the government should follow-up to act on lessons learned, to identify, investigate and address the causes of discrepancies.

## 8. Impact analysis (not to be considered in assessing compliance with the EITI provisions)

### Documentation of progress

#### **Impact**

The objectives of Ukraine's EITI implementation, as agreed by the MSG, include the following: improved transparency and reduced corruption in the extractive industries; strengthened partnership between stakeholders to decrease tensions; and adopting greater sectoral reforms. The MSG has been diligently reviewing the objectives in order to ensure the consistency of its five-year implementation process. There is a positive direction of travel in fulfilling all of these objectives and the outcomes of implementation have shown tangible impact.

The EITI has been an important platform for **strengthening transparency and accountability** within the government and extractive industries in Ukraine. The EITI is helping to improve government systems and procedures, especially with regards to licensing. For instance, following the EITI requirements, the Ministry of Nature and the State Geology Agency have established an online cadastre for extractive licenses<sup>120</sup> and an interactive map for geological reserves<sup>121</sup>. After releasing the first EITI Report in 2015, the State Fiscal Service started to publish quarterly, in excel format, data on tax revenues from the extractive industries<sup>122</sup>. During preparation of the 2014-15 EITI Report, some extractive companies outside the scope of the EITI submitted revenue data on a voluntary basis.

The EITI has contributed to **increasing access to information**. Most of this information has not been available to the public before, and the EITI Reports have become and remain the main source of information on the extractive industries in Ukraine. The reports have been improving annually by providing more timely data, by expanding the scope and number of reporting companies and by adding more relevant data, such as on local content and social payments.

The EITI has caused and/or influenced certain **legal and administrative reforms**. One of the UA-EITI's biggest achievements has been its contribution to legislation allowing the decentralization of production royalties from oil and gas companies. Starting from 1 January 2018, five percent of the rental payments from oil and gas companies will be channelled to the regions where extraction occurs, which will greatly contribute to improved dialogue and revenue sharing between local communities, extractive companies and authorities. On 16 June 2015, Parliament adopted a Law entitled "Introduction of Amendments to Certain Legislative Acts of Ukraine on Ensuring Transparency in the Extractive Industries" that requires extractive companies to report in accordance with the EITI requirements (Law on Introduction of Amendments to Certain Legislative Acts of Ukraine on Ensuring Transparency in Extractive Industries, 2016). The Cabinet of Ministers issued Regulation №1039 to define the mechanism for collection and

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<sup>120</sup> <http://geoinf.kiev.ua/wp/interaktyvna-karta-rodovyschch-korysnykh-kopalyn.htm>

<sup>121</sup> <http://geoinf.kiev.ua/wp/interaktyvna-karta-rodovyschch-korysnykh-kopalyn.htm>

<sup>122</sup> <http://sfs.gov.ua/diyalnist/-/informatsiya-pro-splatu-podatkov/319895.html>

dissemination of information, required by the EITI Standard (Regulation №1039 on "Ensuring Transparency in the Extractive Industries", 2016). To follow the recommendations from the EITI reporting, the government, with support from the MSG, developed a draft Law on "Transparency of Information in the Extractive Industries" that was submitted to Parliament in June 2017.

UA-EITI spearheaded efforts to facilitate **dialogue on decentralisation and community development** between various stakeholders, including the line ministries and agencies, local authorities, local communities, and extractive companies. The ongoing efforts enable an open and publicly-accessible debate on the follow issues: the benefits for local communities; decreasing local tensions; and practical application of the new legislation at a sub-national level. UA-EITI and the MSG members have actively undertaken outreach both in the capital Kyiv but more importantly in the main extractive regions. As a part of its communication strategy, UA-EITI together with relevant stakeholders held 74 dissemination and outreach activities in Kyiv and the regions in 2016 and at least 50 events in January-July 2017<sup>123</sup>; all of them are covered in the media.

Ukraine is one of the leading countries in implementing **beneficial ownership transparency**. As a part of the anti-corruption reforms, in October 2014, Parliament adopted Law No.1701-VII on "Introducing Amendments to Certain Laws of Ukraine to Disclose Ultimate Beneficial Owners of Legal Entities and Public Officials". The Ministry of Justice of Ukraine oversees the publicly accessible beneficial ownership register<sup>124</sup>. During Spring 2017, Ukraine was also the first country to officially become part of the Global Beneficial Ownership Register launched by Open Ownership. Politically Exposed Persons (PEPs) are mandated to declare their assets and inform of any form of direct indirect (beneficial) ownership. The anti-corruption civil society group launch a public register for PEPs<sup>125</sup>.

***Constructive engagement:*** The EITI has helped create opportunities for dialogue and constructive engagement on issues of extractive industries management, helping to start building dialogue and trust and on national and local levels between the three constituencies. Many MSG members agreed that participating in EITI reporting and attending MSG meetings had enabled more frequent communication between relevant entities.

***Public understanding:*** With information disclosed through UA-EITI widely recognised as credible and comprehensive, there is evidence that public understanding of the management of natural resources had gradually improved. All stakeholders agree that they gained a better understanding of the extractive industries through their participation in MSG discussions. UA-EITI sub-national outreach and dissemination efforts have proven an effective means of informing local communities of various aspects of the contribution of the extractives sector to their regions. Civil society pointed to the importance of UA-EITI transparency in increasing the public's trust in government's and industries' accountability.

***Strengthening government systems:*** EITI has led to tangible impacts through government reforms, increased engagement of the extractive companies and greater awareness by host communities of their

<sup>123</sup> <https://drive.google.com/drive/folders/0BzQ1g61NKgtDRkpTT190U1NYNFk>

<sup>124</sup> <https://usr.minjust.gov.ua/>

<sup>125</sup> <https://pep.org.ua/en/>

rights. For instance, the government introduced changes to the Budget Code that enabled 5% of royalties paid by oil and gas companies to be transferred to the local communities. The EITI contributes to developing of transparent reporting mechanism for allocation and use of subnational revenues.

Due to joint efforts of MSG members the legal framework for EITI reporting was adopted. In particular, Law No.521-VIII on "Amendments to Certain Legislative Acts of Ukraine on Ensuring the Transparency in the Extractive Industries", Cabinet of Ministers Order No. 910-r on "Action Plan for the Implementation of the Extractive Industries Transparency Initiative" and Cabinet of Ministers Resolution No. 1039 on "Approval of the Procedure on Ensuring Transparency in the Extractive Industries". The MSG has also initiated development of draft Law 6299 on "Transparency in the Extractive Industries" that has already been submitted to the Parliament.

*Recognition:* EITI has been important for Ukraine's international image. It is recognised as an entry point for the wider energy reforms. The EITI has been important in setting a framework for transparency and accountability in company payments to government, as well as budgetary process and social expenditures. Implementation of the EITI has also been important to the Ukrainian government in supporting its reform agenda as part of its EU accession efforts and Open Government Partnership commitments.

### **Sustainability**

*Funding:* EITI process in Ukraine is mainly funded by donors. The EITI Reports and the national secretariat are funded by the World Bank's EITI Multi-Donor Trust Fund (MDTF) until 2016 and its Extractives Global Programmatic Support (EGPS) since 2016, whereas local donors provide for dissemination and outreach activities and follow up projects for CSOs. The MECI has consistently been hosting the national secretariat since the beginning. Heavy dependence on external funding imposes risks on the sustainability of the process. Therefore, the MECI applied for the state funding for the EITI Reports and staff members' salaries in 2018. Over the medium term, the embedding of EITI reporting into government and company systems should ensure the sustainability of EITI implementation over the longer term.

*Institutionalisation:* The MSG together with members of Parliament have developed a draft Law on "Transparency in the Extractive Industries" to imbed full company disclosure into the national legislative framework. The law is aligned with the EU Transparency Directive and enshrines key EITI requirements into national legislation. The draft law has once failed to pass the Parliament's vote; however, it is not back on the Parliament's agenda before the end of the year. The Parliament has also adopted amendments to the Budget Code, enabling allocation of five percent of the rental payments from oil and gas companies to the extractive regions.

### **Opportunities**

Stakeholder consultations identified several opportunities for increasing the impact of the EITI.

Even though, there is now increased transparency in the license allocations, several stakeholders identify **the licensing system** as complicated, bureaucratic and prone to corruption. An ever-changing legal and fiscal environment makes it difficult for companies to comply as there are overlapping reporting-requirements and uncertainty of current rules and procedures. This can potentially put investors off due to the increased risk it represents. A potential solution is for Ukraine to move towards **mainstreamed disclosures** which clarify the laws and regulations in real-time.

Given the influence and prevailing **ownership in extractive assets held by state-owned companies** and the challenges with SOE disclosures highlighted in this initial assessment, Ukraine's government could work towards increasing transparency in SOE governance, ownership, financial transactions, lending and spending, drawing on the OECD guidelines for state-owned enterprises and other best practices. Clarifying the full list of the SOEs, their subsidiaries and the full extent financial relationships between these companies would contribute to the government's SOEs privatisation agenda.

Ukraine is encouraged to continue conversations about **contract transparency**. Civil society have expressed a desire for all contractual terms to be disclosed, especially the social fiscal provisions, environmental safety provisions, reclamation obligations and infrastructure investments. This would enable holding government and companies to account. Contracts disclosure could contribute to a better business environment within the extractive industries.

Lastly, the role of **quality assurance in financial reporting** in Ukraine is still unclear. UA-EITI has a great opportunity to tap into existing government agencies and their current work. Increasingly making use of the internal as well as independent audits performed by the State Audit Service and the Accounting Chamber can help reflect the true quality of EITI data and possibly improve government information on extractives as well as in other sectors.



## Annexes

### Annex A – List of MSG members and contact details

Government	Natalia Boyko, Deputy Minister of Energy and Coal Industry	
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	Denys Kazakhskiy, Research Centre for Issues in Eastern Ukraine	

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	Vitaliy Filenko, NGO 'Nova Energia'	0979257249 fystenko@gmail.com

## Annex B – MSG meeting attendance

Ukraine-EITI MSG meeting attendance chart																	
MSG meeting	29 May 2017	22 February 2017	1 February 2017	15 November 2016	6 September 2016	24 May 2016	21 March 2016	25 December 2015	30 November 2015	24 September 2015	6 August 2015	5 May 2105	31 March 2015	24 February 2015	Not attended	Attended	Not a MSG member at that time
Government																	
MSG Chair															11	3	
Ministry of Energy and Coal Industry															0	14	
Ministry of Finance															8	6	
Energy and Utilities the National Regulatory Commission															1	13	
Ministry of Economic Development and Trade of Ukraine															3	11	
State Fiscal Servise of Ukraine															4	10	
Ministry of Environment and Natural Resources of Ukraine															6	8	
State Geology Service															1	6	
Civil society																	
International Renaissance Foundation															0	14	
NGO "Centre for Global Studies Strategy XXI"															2	12	
NGO "Dixi group"															0	14	
NGO "All-Ukrainian People's control"															2	11	1
NGO "Institute for Sustainable Development"															5	3	6
NGO "Bureau of Development, Innovation and Technology"															3	3	8
NGO "Poltava Branch of the Public Service of Ukraine"															1	5	8
NGO "New Energy"															0	6	8
NGO "Center for Research on the Problems of Eastern Ukraine"															5	1	8
NGO "Analytical Center for Regional Cooperation"															5	9	
Companies																	
NJSC "Naftogaz of Ukraine"															1	13	
PJSC "Ukrgezvydobuvania"															3	11	
PJSC "Ukrtransgaz"															2	12	
LTD "DTEK Oil and Gaz"															7	7	
LTD "Cadogan Ukraine"															6	1	7
LTD "Eni Ukraine"															3	10	1
Shell Ukraine															3	2	9
Shevron Ukraine NLC															1	0	13
PJSC "ArcelorMittal Kryvyi Rih"															1	5	8
LTD "DTEK Energy"															1	5	8

## Annex C – Cost of EITI Reports

- 2013 Report: 120 000 USD
- 2014-2015 Report: 220 000 USD

### Reporting timeline:

- Date of approval of the ToRs for the Independent Administrator (IA):
  - 2013 Report: 31.03.2015
  - 2014-2015 Report: 21.03.2016
- Date of request for proposals:
  - 2013 Report: 5.05.2015
  - 2014-2015 Report: 4.04.2016
- Date of selection of winning bidder:
  - 2013 Report: May 2015
  - 2014-2015 Report: 28.04.2016
- Date of MSG's approval of winning bidder:
  - 2013 Report: 6.08.2015
  - 2014-2015 Report: 24.05.2016
- Date of signing of IA contract:
  - 2013 Report: 31.07.2015
  - 2014-2015 Report: 27.08.2016
- Date of MSG approval of reporting templates:
  - 2013 Report: 06.08.2015
  - 2014-2015 Report 06.09.2016

## Annex D – List of stakeholders consulted

### Government

**ANTON GUDACHENKO**, National Commission for State Regulation of Energy and Public Utilities

**DARIA YAKUSHKO**, National Commission for State Regulation of Energy and Public Utilities

**IGOR NASALYK**, Minister of Energy and Coal Industry of Ukraine

**LARYSA MELNYCHENKO**, Ministry of Finance

**MYKOLA FOSCHII**, First Deputy Chair, the State Service of Geology and Subsoil of Ukraine

**NATALIA BOYKO**, Deputy Minister of Energy and Coal Industry of Ukraine

**OLEKSANDR KASYANCHUK**, National Commission for State Regulation of Energy and Public Utilities

**OLEKSANDR SHKURALAT**, First Deputy Head, the State Audit Service

**OLEKSANDR SHUMSKYI**, Head of Department on Taxes and Legal Fees, State Fiscal Service

**OLEKSANDR ZHARUK**, Department of control on housing and municipal services, the State Audit Service

**SVITLANA DNISHCHENKO**, the State Audit Service

**SVITLANA MYKHAILOVSKA**, National Commission for State Regulation of Energy and Public Utilities

**TETYANA BOROVKOVA**, Department for internal control and audit, the State Audit Service

**TETYANA DNIPROVA**, Department for Euro-integration ad methodology, the State Audit Service

**VITALIY KUSHNIROV**, Director General, the Department of Strategic Planning and European Integration, Ministry of Energy and Coal Industry

**VIKTORIYA TRAITLI**, Department for Euro-integration ad methodology, the State Audit Service

**VOLODYMYR LABA**, Department of Control of the industry, energy, transport and financial systems, the State Audit Service

**YULIA SOLYANIK**, Deputy Head, the State Audit Service

## Parliament

**ALEX RYABCHYN**, the Committee on Fuel and Energy Complex, Nuclear Policy and Nuclear Safety

**OLGA BIELKOVA**, Deputy Head of the Committee on Fuel and Energy Complex, Nuclear Policy and Nuclear Safety

**OLEG DOMBROVSKY**, Head of the Committee on Fuel and Energy Complex, Nuclear Policy and Nuclear Safety

**OSTAP YEDNAK**, the Committee on Fuel and Energy Complex, Nuclear Policy and Nuclear Safety

## Industry

**ANDRIY TYMOSHENKO**, Ukgazvydobuvannya

**IRYNA ZOLOTARYOVA**, Finance Department, Ukrtransgaz

**MILAN NAYDA**, Head of the Department of Foreign Economic Relations, Ukrtransgaz

**OLGA ADAMOVSKA**, ENI Ukraine

**OLGA LUTSYK**, Arcelor Mittal

**SERGIY GLODUN**, Ukrtransgaz

**SERGIY KOSYANCHUK**, Naftogaz Ukraina

**TETYANA PROKOPCHUK**, Vice President, American Chamber of Commerce

**TETYANA TEMNYUK**, Policy Officer on Energy Issues, American Chamber of Commerce

**VITALIY GRYSHCHENKO**, Department of settlement, Ukrtransgaz

**VOLODYMYR KUSHIY**, Government relations manager, Ukgasvydobuvannya

**YAROSLAV KUPETS**, Pricing Department, Ukrtransgaz

**YULIA BOZHEMSKA**, DTEK

## Civil Society

**ANDRII CHUBYK**, Executive Director, Strategy XXI

**GANNA KIYASCHENKO**, Public Organization ‘Poltava Branch of the Public Service of Ukraine’

**OLEKSIY ORLOVSKY**, Director of the Program “Democratic Practice”, International Renaissance Foundation

**OLENA PAVLENKO**, President, Dixi Group

**ROMAN NITSOVYCH**, Dixi Group

**TANYA COOPER**, Ukraine Director, Human Rights Watch

**TETYANA SHEVSHUK**, Anti-Corruption Action Center

**VITALIY FILENKO**, NGO ‘Nova Energia’

**VLAD DEYNEKO**, Analytical Centre for Regional Cooperation

## Independent administrator

**ANDRII KITURA**, Manager, Cleantech and Sustainability Services, EY

**IRYNA KALYTA**, Tax and Law Director, EY

## Media

**ALLA YEROMENKO**, Dzherkalo Tyzhnya

**ANASTASIYA YERMAKOVA**, UA-Energy, Dixi Group

**DMYTRO SYDOROV**, UNIAN

**NINA LYSENKO**, Association Subsoil Users of Ukraine

**ROMAN IVANCHENKO**, Interfax Ukraine

**VICTORIA ILCHENKO**, journalists

## Others

**ANREAS RUNNBAUER**, GIZ

**ANDRIY NESTERENKO**, USAID Regional Mission for Ukraine, Belarus and Moldova

**CATHY COTTRELL**, First Secretary on Energy Policy and Head of Commercial Section, British Embassy Kyiv

**DINA NAREZHNEVA**, Head, UAEITI national secretariat

**FREDRIK ARTHUR**, Counsellor/DHM, Royal Norwegian Embassy in Kyiv

**GIUSEPPE GRIMALDI**, EBRD

**LESYA KHOMYAK**, PR Manager, UAEITI national secretariat

**NASIMA NAZRIYEVA**, Coordinator, Natural Resource Governance Institute

**OKSANA SUKHINA**, Economic Specialist, U.S. Embassy to Ukraine

**OLESYA NEKHROSHKO**, Finance Manager, UAEITI national secretariat

**SUKRU BOGUT**, USIAD Regional Mission for Ukraine, Belarus and Moldova

**SVITLANA MIZINA**, PR consultant, GIZ



## Annex E – List of reference documents

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