## 2.5 – Beneficial ownership

* **Validation Report** (pages 30-31, 38-39): *"Moreover, it appears that there are some inconsistencies in beneficial ownership information of SOEs. For example, there might be cases where data states that there are no beneficial owners, whereas other cases do not contain any information. In addition, the register does not clearly differentiate whether a company is directly or indirectly state-owned.*

*…*

*Annex A*

*The 2017 EITI Report includes an overview of various gaps in the USR. For example, it is noted that “The USR [Unified state register] does not provide information about ultimate beneficial owners of state and municipal enterprises. Instead, the USR provides information on founders (participants) of*

*such legal entities, including state executive bodies managing those.*”

**MSG**: Please note SOEs cannot have a beneficial owner by definition under the law, as there are no individuals controlling them.

As noted in Annex 4 to the Report, under the Law of Ukraine "On State Registration of Legal Entities, Individual Entrepreneurs and Public Organizations" the state register is not expected to include information on beneficial owners of state and municipal enterprises at all. So, for SOEs directly owned by the State the different technical approaches to reflecting the absence of UBOs in the register have no practical impact.

Thus, the absence of references to UBO of state and municipal enterprises in USR should not be considered a gap.

Please also note that the Unified State Register always contains information on who the direct legal owner of any company is. If the company is legally owned by another company (for example, a fully state-owned company), it is possible to check who the legal owner of such other company is via the register (e.g., the state represented by the respective ministry). Therefore, it is possible to identify whether the company is directly or indirectly state-owned in all cases.

* **Validation Report** (page 41): “The 2017 EITI Report notes that the information about the owners of 5% or more of the shares in joint-stock companies is available in the database to the Stock market infrastructure development agency of Ukraine (SMIDA) (p.215). The report does not comment on publicly listed companies registered abroad.”

**MSG**: Please note that the entities subject to EITI reporting in 2017 did not include any public listed companies registered abroad. Therefore, this issue was not specifically addressed in the Report. As for non-resident owners of extracting companies, information on such owners is accessible via SMIDA and the state register of legal entities as discussed in the EITI Report.

## 2.6 – State participation

* **Validation Report** (page 12): "*The report details how the state participates in the extractive industries, through three types of incorporation: Joint-stock companies (JSCs), State (unitary) enterprises (SEs), and National joint-stock companies (NJSCs).*"

**MSG**: Just to clarify, NJSCs are not a separate type of legal entity since *de jure* they are ordinary joint-stock companies. The "national” status of such companies is a historical addition, which has no impact on their legal status. Special legal status of public-sector entities is determined by state participation in their capital (please see page 167 of the EITI Report).

* **Validation Report** (pages 13, 45, 47):

"*SOEs are subject to general rules on their financial relationship with the state, although specifics are subject to state approval of financial plans. These contain details regarding the rules for each SOEs’ dividend payments to government, the precise values of transfers from government, and the percentages of earnings that SOEs can retain or reinvest in its own operations. SOEs are also able to seek third-party financing, both debt and equity, with precise details contained in financial plans.*

*…*

*While not required by the EITI Standard, it is worth noting that the report falls short of specifying what decisions were made for specific SOEs through financial plans.* ***Therefore, the rules relating to each of the above financial elements (and each SOE) are not publicly accessible.***

*Corporate or ministerial decrees, shareholders meeting minutes or other documents that include such information do not appear to be publicly available. As the detailed rules applicable to each SOEs’ retained earnings, dividends, reinvestments and third-party financing, it is not currently possible for UAEITI to assess whether SOEs adhere or deviate from individual policies, only general rules.*

*…*

*To determine the precise rules for each SE, they are required to submit financial plans to line ministries for approval that stipulating the values and percentages of each of the above, unless they are natural monopolies or net profits exceed UAH 50m (normally incorporated as JSCs).*

*…*

*There are no references to the individual plans or budgets or financial plans for each SOE in 2017, and the report does not indicate what rules were approved for each SOE as the financial plans are not publicly accessible.*"

**MSG**: Please note that financial plans do not contain any legal rules that govern the relationships between the state and the SOE. Instead, they contain information about projected financial indicators (all within the framework of the rules established by Ukrainian legislation and in some cases – charters or other constituent documents of such SOEs). This mechanism is essentially aimed to keep business activity of SOEs within state oversight.

Moreover, while financial plans contain projected data, the actual information may be found in financial statements, which the Independent Administrator used to retrieve actual financial information to the extent possible.

* **Validation Report** (page 13): "*Additionally, the report describes some aspect of actual practices of SOEs’ financial relations in 2017. Firstly, for each sector, the report states there were no deviations from financial policies, though lacking precise references to the rules; each SOEs’ financial plan for 2017.*"

**MSG**: Please note that the rules are described in section 6.4.1.3 of the EITI Report. Financial relations between the entity and its legal owner is mostly determined by the legal form of the respective entity as noted in the Report.

* **Validation Report** (pages 44-45): "*The IA explains that Section 6.4.2 of the EITI report presents the Accounting Chambers’ findings for the oil and gas sector, and that there were multiple deficiencies and delays in approval of the financial plans. However, most of details contained in financial plans and the reports on their performance are publicly available, and the Ukraine EITI was not able to compare policy to practice.*"

**MSG**: The data for each financial plan is not publicly available.

Control over (1) timely preparation of financial plans and (2) implementation of indicators in approved financial plans is carried out by their managing subjects[[1]](#footnote-2), which submit information on approval and implementation of financial plans to the Ministry of Economy. In turn, the Ministry of Economy analyzes and summarizes the information received and publishes summarized data on implementation of financial plans at its official website[[2]](#footnote-3).

Hence, as financial plans are not available in public sources and there is only generalized information on their indicators and implementation from the Ministry of Economy, it is impossible to compare such information with actual financial statements (if at all feasible).

* **Validation Report** (page 14): "*Additionally, neither form of disclosure appears to clarify the terms of ownership for each SOE interest; whether full-paid equity, carried interest, or free equity. As an example, there is lacking information regarding Ukrnafta PJSC’s responsibilities towards JV Ukrkarpatoil LTC LLC, another material company that participated in Ukraine’s 2017 EITI reporting.*"

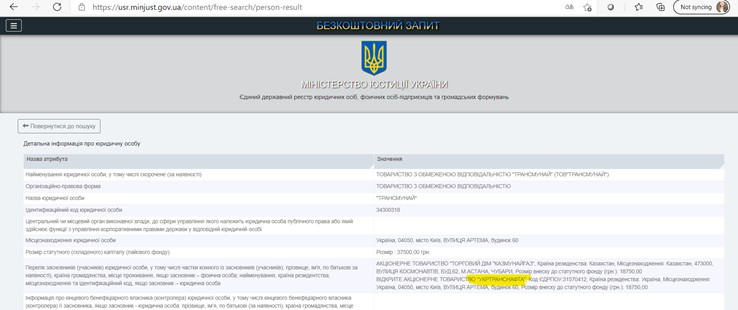
**MSG**: Please note that the specifics of state equity are mostly defined by the legal form of the respective entity. Generally, all Ukrainian legal entities are owned by the state in its shareholding capacity (i.e., full-paid equity terms). Other types of state equity are applicable only in certain cases (e.g., carried interest is possible, but is not necessarily in place, for specific PSAs; free equity is possible in concession agreements). Hence, they are not applicable for ordinary legal entities.

JV Ukrkarpatoil LTC is a limited liability company (LLC), which is why it is owned by Ukrnafta in its shareholding capacity, i.e., exercising full-paid equity.

* **Validation Report** (page 14): " *The EITI Report claims Ukrtransnafta JSC holds 50% equity in Transmunai LLC, however, the company is not included in any of the company’s financial statements.*"

**MSG**: Information on the participation of Ukrtransnafta JSC in the authorized capital of Transmunai LLC was provided by Ukrtransnafta JSC in their reporting forms.

The accuracy of the information can be checked in the register on the website of the Ministry of Justice (<https://usr.minjust.gov.ua/content/free-search>).

****

* **Validation Report** (page 14): "*However, the main issue remains that no information is available for subsidiaries of subsidiaries.*"

**MSG**: *Table 5.10: The list of companies in which the subsidiaries of Naftogaz of Ukraine NJSC hold 50% and more the shares* in the EITI Report of Ukraine for 2017 provides a list of subsidiaries of subsidiaries of Naftogaz of Ukraine NJSC, which was reported by companies in the reporting forms.

The question remains what is considered "subsidiaries of subsidiaries" in the comment in validation report, whether it is a second, third or fourth circle of ownership. The state owns 100% of the authorized capital of Naftogaz of Ukraine NJSC (first circle), Naftogaz of Ukraine NJSC participates in other enterprises (second circle), which in turn participate in other enterprises (third circle). Table 5-10 contains information about the third circle of ownership. The source of information was the responses of companies in reporting forms and included majority ownership.

Further EITI Reports will also consider information from open sources including the majority and minority ownership, to ensure the completeness of the information. Now it is getting clear from open sources that the subsidiaries of subsidiaries of Naftogaz of Ukraine NJSC do not participate in other enterprises (fourth circle).

 Коментар щодо вимоги №2.5.

1. Я пропоную звернути увагу Секретаріату на те, що оцінка у порівнянні із попередньою валідацією, незрозуміло чому була змінена на гіршу. Якщо раніше Україна за цим пунктом оцінювалася блакитним кольором, тепер, колір змінився на темно-зелений. При цьому, Секретаріат зазначає, що оцінка не зазнала змін. Це неправильно. Більш того, Україна, на моє глибоке переконання, продовжує залишатися найбільш просунутою серед країн ЕІТІ щодо ВО. Тому, пропоную наполягати на залишенні попередньої оцінки.
2. У документі я жодним чином не побачив посилання на те, що наша країна працює над питаннями верифікації бенефіціарних власників. Фактично, ми єдині, хто системно працює із цим питанням. Ми, навіть, маємо відповідні зобов'язання у плані дій по OGP. Добре було б про це зазначили у валідаційному Звіті.
3. Для мене дуже дивним виглядають коментарі про те, що у нас немає системи звірки інформації по різних реєстрах щодо бенефіціарних власниках. Уповноважені державою особи (НАЗК, суб'єкти первинного фінансового моніторингу, тощо) мають відповідні механізми перевірки інформації із різних реєстрів щодо ВО. Зокрема, ними співставляється інформація із єдиного державного реєстру юридичних осіб та інформація із реєстру електронних декларацій, які заповнюють політично значущі особи, уповноважені на виконання функцій держави. Більш того, ці реєстри є відкритими та безкоштовними для будь-кого. Нарешті, існують, навіть, комерційні платформи, які підтягують та співставляють інформацію із різних реєстрів (біля 150 українських та міжнародних реєстрів). Яскравим прикладом тут є Youcontrol.

Також у валідаційному звіт не було посилання на нашу кращу практику щодо моніторингу та оцінки. Такі речі слід обов'язково відображати у валідаційних звітах. Тим більше, що Правління та Секретаріат зараз активно просувають цю тему.

Технічні коментарі:

Ст. 10 – Асоціація виробників газу в Україні – перейменуйте на Асоціація газовидобувних компаній України і далі по тексту також

Ст 29 – по вимозі 6.3 у висновку – Міжнародний секретаріат вважає ступінь розкриття не достатнім, а далі йде висновок, що Україна виконала вимогу

1. Art. 10-13 of the Decision of the Ministry of Economic Development and Trade of Ukraine “On approval of the Order on drawing up, approving and controlling execution of the financial plan of public sector entities" No. 205 dated 02.03.2015, <https://zakon.rada.gov.ua/laws/show/z0300-15#Text> [↑](#footnote-ref-2)
2. Available at: <https://www.me.gov.ua/Documents/List?lang=uk-UA&id=00bbbf50-cea4-4438-ab49-3e1cef452d14&tag=FinansovePlanuvannia> [↑](#footnote-ref-3)