

Compliance Committee

The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters

On case ACCC/C/2014/118

The Ministry of Environment and Natural Resources of Ukraine presents its compliments The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters Compliance Committee, has the honour to inform the following.

The Ministry of Ecology has addressed the questions submitted by the Compliance Committee in case ACCC/C/2014/118 and provide answers.

Questions from the Compliance Committee:

1. What is the current legal status of the Production Sharing Agreements (PSAs) agreed in 2013? If either Chevron or Shell reconsidered their position and decided to resume the contractual relationship, could the original PSAs be brought back into effect or would the entire tendering process have to begin again?

Answer:

Hydrocarbons Sharing Agreements from Chevron and Shell are valid.

The action of Production Sharing Agreements may be terminated prematurely only in the order and under the conditions stipulated by the Law of Ukraine "On Production Sharing Agreements" and the Production Sharing Agreement.

Activities under these agreements are not implemented.

However, according to Part 8 of Article 9 of the Law of Ukraine "On Environmental Impact Assessment", if before the decision on the planned activity has been made changes to the design documentation or amendments to the legislation that require changes in the environmental conditions specified in the Conclusion of the Environmental Impact Assessment, the Environmental Impact Assessment is carried out repeatedly.

Thus, even if the activities under the current Hydrocarbon Sharing Agreements are resumed from 2013, the Environmental Impact Assessment procedure will be re-implemented in accordance with the requirements of the new Law on Environmental Impact Assessment, considering the norm mentioned above.

2. Is it possible to transfer the rights arising under the two PSAs agreed in 2013 to new investors to replace Chevron and Shell without initiating a new tendering process and developing a new PSA(s)?

Answer:

The Assignment of rights to another investor under existing Hydrocarbon Agreements may be carried out in accordance with the requirements of the Law of Ukraine "On Production Sharing Agreements".

However, according to part 8 of Article 9 of the Law of Ukraine "On Environmental Impact Assessment", if changes to the design documentation or changes to the legislation that require changes in the environmental conditions specified in the Conclusion of the Environmental Impact Assessment are made before the decision on the planned activity is made, the environmental impact assessment is carried out repeatedly.

Thus, even if the rights under the existing hydrocarbon sharing agreements from 2013 are transferred, the procedure of Environmental Impact Assessment considering the norm mentioned above will be repeated in accordance with the Requirements of the new Law.

3. Are the full texts of the two PSAs agreed in 2013 now available to the public?

(a) If not, please explain the legal basis on which they are not available to the public.

(b) If the full texts of the PSAs have not been publicly released, please explain how article 4, paragraph 6, of the Convention has been applied to ensure that all parts of the PSAs that are not explicitly within the scope of one of the exceptions in article 4 of the Convention have been made available to the public.

(c) If the PSAs have been publicly released, either in full or in part, please send a copy of these documents to the Committee, together with an English translation thereof.

Answer:

The PSAs 2013's texts are not publicly available since the "For official use only" stamp hadn't been removed of them.

In accordance with Article 6 of the Law of Ukraine "On Access to Public Information", several types of restricted information are defined, in particular: confidential information; secret information; official information.

So, PSAs 2013's information manager is classified as confidential. On this matter there is ongoing litigation at the national level.

4. Are the mineral extraction permits for the Yuzivska and O1seka fields now available to the public?

(a) If noI please explain the legal basis on which they are not available to the public.

(b) If the full texts of the permits have not been publicly released, please explain how article 4, paragraph 6, of the Convention has been applied to ensure that all parts of the permits that are not explicitly within the scope of one of the exceptions in article 4 of the Convention have been made available to the public.

(c) If the mineral extraction permits have been publicly released, either in full or in part,' please send a copy of these documents to the Committee, together with an English translation thereof.

Answer:

The specifics of the use of subsoil during the fulfilling of the Production Sharing Agreement, primarily related to the provision, assignment and termination (suspension or restriction) of the right to use the subsoil, as well as the legal formulation of such relations, stipulated by the Law of Ukraine "On the Production Sharing Agreements" and the Production Sharing Agreement.

The Permits for subsoil use for the PSAs 2013 are not available to the public for the reasons given in the answer to question 3.

It should be noted that according to the Law of Ukraine "On Environmental Impact Assessment" objects subject to the EIA procedure include:

draft agreement on the distribution of hydrocarbons;
mining activity.

So, for the first case, the Decision on the implementation of activities is the signing of the PSA, and for the second case - the Permit for subsoil use.

In accordance with the new procedure of Environmental Impact Assessment, the decision on the implementation of the planned activity (with indication of the body, the number and the date of their adoption) shall be made public by placing at the official website of the body, in the Unified Register of EIA and published in the media.

5. The Committee notes that the new Law of Ukraine "On environmental impact assessment" entered into force on 18 December 2017. Please indicate which provisions of the new law will ensure access to information, public participation and access to justice in the specific context of the development of any new PSAs. (It is not necessary to provide the text of the law itself as tis was already provided to the Committee in the context of the follow-up to decision V/9madopted by the Meeting of the Parties to the Convention).

Answer:

In accordance with Part two of Article 11 of the Law of Ukraine "On the Production Sharing Agreements", draft Production Sharing Agreements are subject to Environmental Impact Assessment.

The procedure on Environmental Impact Assessment will be carried out in accordance with the requirements of the new Law.

In accordance with Article 4 of the Law, all documentation required for the Environmental Impact Assessment is available to the public. Therefore, all relevant information is made public by placing it in the Unified Register of Environmental Impact Assessment, which does not restrict the access of interested parties. All information in it is open and free.

In accordance with Sections 7, 8 of Article 4 of the Law "On Environmental Impact Assessment":

«7. The competent local authority and the competent central authority shall ensure free of charge public access to all information (with due account of the requirements of paragraph 8 of this Article) relevant to the decision-making process as it becomes available.

8. In exceptional cases where the documentation on the proposed activity or the environmental impact assessment report contain confidential information of the developer, such information upon the reasoned request of the developer shall be detached and the remaining information shall be provided to the public for examination. However, the information on the environmental impact, including quantitative and qualitative indicators of emissions and discharges, physical and biological factors of impact, use of natural resources and waste management shall be open and access thereto shall not be restricted.»

Considering the above, we believe that Ukraine has fully complied with its obligations regarding access to information, public participation in decision-making and access to justice in environmental matters by adopting and implementing the provisions of the Law of Ukraine "On Environmental Impact Assessment". In this regard, please close the case ACCC/C/2014/118.

The Ministry avails itself of the opportunity to renew to the Committee the assurances if its highest consideration.

**Deputy Minister
on EU integration**

/signature/

Mykola Kuzio