

## Terms of reference for the Appointment of Short-Term Experts

ToRs Nr	NKE-ToR-C2-004
Title	C2 /Activities 2.a and 2.b – Mining -Law Drafting-004
Type	Short-term expertise
Expert title	Mining Expert
Category	Senior Nat. NKE
Man-days	20
Man-days (home)	Not applicable
Date of filing	16.12.2019
Activity number	2a and 2b
Start date	January 2020
End date	June 2020

## 1. BACKGROUND & JUSTIFICATION

### 1.1. Introduction

The project is designed to support the Ministry of Energy and Environmental Protection, which was set up following the recent merging of the Ministry of Energy and Coal Industry and the Ministry of Ecology and Natural Resources, and all other involved institutions (Ministries, Parliament, the State Service for Geology and Mineral Resources of Ukraine, agencies, NGOs, etc) in the implementation of reforms in the national extractive sector. These reforms are deemed necessary in order to put in place all requisite conditions for the sustainable and efficient use of mineral resources in Ukraine as well as to attract as much as possible international investors in the sector. The assistance will be focused on harmonising and improving Ukraine's subsoil legislation in line with the best practices of the EU Member States and where relevant in line with the EU *acquis* by putting in place a completely new subsoil use system. Consequently, the whole approach towards the development of the new extractive sector policy and the legislative and institutional framework will be reassessed and updated.

The Project has the following components:

- Component 1: Setting main policy areas for the development of the subsoil use sector;
- Component 2: Setting a proper Legal Framework for the subsoil use sector;
- Component 3: Improving Governance and Regulatory Functions of the Sector
- Component 4: Raising awareness.

The Expert will work within framework of this ToR under Component 2, which is intrinsically linked with the formulation of the updated design of the legislative system relating to the carrying-out of extractive activities, and the drafting of the new Subsoil Code.

### 1.2. Beneficiary

The key Project beneficiary is the Ministry of Energy and Environmental Protection (MEEP), which is the main State body that is responsible for the formulation of the national policies in the extractive industry. Other important stakeholders include the Ministry of Economic Development and Trade and the State Geological Service of Ukraine.

Other stakeholders and target groups include:

- Relevant business associations and organisations;
- Regional and Local Authorities with regulatory mandate in the field of extractive activities;
- Mineral and oil and gas extraction companies and the business community at large;
- The Parliamentary Committee on Natural Resources and Environment and Members of the Parliament;
- Relevant NGOs;
- Indirectly, the whole population of Ukraine will benefit from the job opportunities that will be created under the newly established legislative, regulatory and institutional regime governing mining and oil and gas activities.

### **1.3. Context of the Activity and issues at stake**

The Expert's tasks aim to formulate the concept of the new Subsoil Code relating to mining extractive activities and to contribute to the drafting of the relevant provisions of the new Subsoil Code in close consultation and collaboration with the main beneficiary and all relevant stakeholders.

- Primarily: The Ministry of Energy and Environmental Protection and the State Geological Service of Ukraine;
- Secondary: the Ministry of Economic Development and Trade, competent regional and local authorities, the Parliamentary Committee on Natural Resources and Environment, mineral extraction companies and relevant business associations.

This action is geared at safeguarding the setting-up of a viable and sustainable legislative, regulatory and institutional framework for the whole domestic extractive industry, which will be formulated through stakeholders' input, engagement, participation and ownership.

## **2. SCOPE OF WORK**

### **2.1 Objective**

The objective of the Expert's tasks is to contribute - under the guidance of the KE2 and the KE4 - to the conceptualization of the new model design for the conduct of mining extractive activities and to the drafting of the provisions of the new Subsoil Code pertaining to minerals' exploration and production operations.

The scope of work includes various aspects of the following tasks of Component 2:

- Activity 2a: Development of a proper design of the legislative system relating to mining extractive activities;
- Activity 2b: Drafting of a new Subsoil Code (the relevant mining provisions).

### **2.2 Methodology**

The Expert is expected to learn the Project Terms of Reference, Technical Offer and Inception Report. The Expert is expected to establish a contact, team up and work closely with the TL, the KE2 and KE4 and with the other NKEs and communication staff as well as the staff of the main project stakeholders and other competent institutions.

### **Activity 2a: Development of a proper design of the legislative system relating to mining extractive activities**

1. Contribute to the formulation of an effective legislative design relating for the conduct of mining extraction operations, including essential elements of a regulatory framework. The design will identify and take into account the gaps in the current legislative framework relevant to extraction activities for minerals and propose additional actions for its refinement in line with the EU *acquis* and the best relevant EU Member-States' practices.
2. The design concept will include, but not limited to:
  - permitting procedures;
  - designation of contract area;
  - applicable operational standards;
  - monitoring, inspection, and control of mining operations;
  - reporting requirements on mining activities; and
  - government take and taxation.

### **Activity 2b: Drafting of a new Subsoil Code (the relevant mining provisions)**

1. Contribute - under the guidance of the TL, the KE2 and the KE4 - to the development of the mining provisions of the draft Subsoil Code, including any Annexes, after taking as a basis the requirements of EU and EEA best practice and relevant EU Directives (e.g. Directive EC /94/22).
2. The draft Subsoil Code to be developed will comprehensively address at least the following matters:
  - defining the Authority to allocate rights for the development of mineral resources;
  - setting clear, transparent, competitive and non-discretionary procedures for issuing exploration, pilot commercial development and extraction rights for mining, including those issued by contracts;
  - specifying technical and financial qualifications needed to obtain a right for the use of subsoil;
  - elaborating contract types;
  - laying down obligations and reporting requirements of the mineral subsoil users;
  - setting conditions for voluntary relinquishment and termination for cause of the permit or right;
  - tackling health, safety, and environment (HSE) requirements related to the permit or right;
  - enumerating procedures for management of possible land-use conflicts between different claimants or users;
  - defining dispute resolution procedures, etc.
3. Participate to regular meetings with the main beneficiary and all relevant stakeholders and discuss with them the content of the draft Subsoil Code with the view to encouraging them to assume the ownership of the Project and to allocate all requisite resources.

The Expert will co-ordinate its work with that of the KE2 and KE4 as well as with all relevant NKEs and the performance of its tasks will be fully consistent with the EU Visibility Guidelines.

### **2.3. Deliverables**

1. Concept Paper on the proposed design of the legislative system relating to mining extractive activities prepared;
2. The mining provisions of the draft Subsoil Code drafted.

### **2.4. Results**

Results produced under Activities 2.a and 2.b are in line with the Project's Workplan, as it has been approved by the Ministry of Energy and Environmental Protection and the EUD.

## **3. LOGISTICS AND TIMING**

### **3.1 Location**

KYIV, Ukraine.

### **3.2 Commencement date and duration**

Estimated time for assignment performance is in total twenty (20) working days, to be delivered from January 2020 till June 2020.

### **3.3 Facilities to be provided by the expert**

The Short-term Expert is expected to have his/her own laptop. The Project will provide some office space and Internet connection as well as administrative support needed for the activity.

## **4.2 Experts' Profile**

### ***Title of the Expert:***

Senior Mining Expert

### ***Qualifications and skills:***

- A university degree in natural sciences, mining engineering, geology, geophysics or other relevant fields; a post-graduate degree on any of these disciplines will be an asset;
- Proficiency in the Ukrainian and English languages;
- Computer literacy (MS Office applications).

### ***General Professional Experience:***

- Good knowledge of the Ukrainian mining industry
- Specific knowledge of the certain fields of the Ukrainian industry, such as solid combustible minerals (lignite, hard coal, peat), metallic minerals (ferrous, base, rare and precious metal ores), non-metallic minerals (chemical and industrial non-metal minerals) and construction raw materials, will be an asset;
- At least 8 years of professional experience in the mining sector.

### ***Specific Professional Experience:***

- Experience in the drafting of legislation in the field of mining will be an asset;
- Good understanding of the current gaps in Ukraine's mining legislation and of the State's and the extractive industry's expectations respecting the updating of the present mining legislative and regulatory system.

## **5. REPORTING REQUIREMENTS**

- Monthly Report upon the end of each Month, following the template/guidance provided by the Project.
- Mission Report upon mission completion, following the template/guidance provided by the Project.