Notice from the Government of the Republic of Poland concerning Directive 94/22/EC of the European Parliament and of the Council on the conditions for granting and using authorisations for the prospection, exploration and production of hydrocarbons

(2018/C 163/02)

PUBLIC INVITATION TO BID FOR A CONCESSION FOR THE PROSPECTION AND EXPLORATION OF OIL AND NATURAL GAS DEPOSITS AND THE EXTRACTION OF OIL AND NATURAL GAS IN THE 'SUCHA BESKIDZKA — WIŚNIOWA' AREA

SECTION I: LEGAL BASIS

1. Article 49h(2) of the Geological and Mining Act (*Dziennik Ustaw* (Journal of Laws) 2017, item 2126)

2. Cabinet Regulation of 28 July 2015 on bidding for concessions for the prospection and exploration of hydrocarbon deposits and the extraction of hydrocarbons, and concessions for the extraction of hydrocarbons (Journal of Laws 2015, item 1171)

3. Directive 94/22/EC of the European Parliament and of the Council of 30 May 1994 on the conditions for granting and using authorisations for the prospection, exploration and production of hydrocarbons (OJ L 164, 30.6.1994, p. 3; Special edition in Polish: Chapter 6, Volume 2, p. 262)

SECTION II: ENTITY INVITING BIDS

Name: Ministry of the Environment

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Website: www.mos.gov.pl

SECTION III: SUBJECT OF THE PROCEDURE

(1) **Type of activities for which the concession is to be granted**

Concession for the prospection and exploration of oil and natural gas deposits and the extraction of oil and natural gas in the 'Sucha Beskidzka — Wiśniowa' area, parts of concession blocks Nos 412, 413, 432 and 433.

(2) **Area within which the activities are to be conducted**

The boundaries of the area covered by this bidding procedure are defined by lines joining points with the following coordinates in the PL-1992 coordinate system:

Point No	X [PL-1992]	Y [PL-1992]
1	237 088,562	543 233,918
2	230 254,640	543 416,610
3	218 462,260	543 731,870
4	218 661,710	552 238,180
5	219 634,170	553 786,280
6	218 677,070	553 795,860
7	218 918,270	574 085,440
8	221 028,900	577 051,280
9	221 144,840	580 743,360

Point No	X [PL-1992]	Y [PL-1992]
10	219 005,580	580 176,250
11	199 583,780	580 168,790
12	200 075,620	536 193,520
13	237 064,531	535 946,928

The surface area of the vertical projection of the area covered by this bidding procedure is 981,67 km^2.

The area covered by the bidding procedure is located in Małopolskie Province in the following:

— municipalities: Czernichów, Mszana Dolna, Pcim, Lubień, Raciechowice, Tokarnia, Wiśniowa, Jordanów, Bystra-Sidzina, Budzów, Zawoja, Stryszawa, Zembrzyce, Brzeźnica, Stryszów, Mucharz, Lanckorona, Spytkowice, Tomice,

— towns and municipalities: Dobczyce, Myślenice, Sułkowice, Rabka-Zdrój, Maków Podhalański, Wadowice, Kalwaria Zebrzydowska,

— towns: Mszana Dolna, Jordanów, Sucha Beskidzka.

The aim of the works to be carried out in Cambrian, Devonian, Carboniferous, Jurassic, Cretaceous, Palaeogene and autochthonous Miocene formations is to document and extract oil and natural gas in the area described above.

(3) **Time limit, not less than 90 days from the date of publication of the notice, and place for the submission of bids**

Bids must be submitted to the headquarters of the Ministry of the Environment no later than 16.00 CET/CEST on the last day of the 91-day period commencing on the day following the date of publication of the notice in the *Official Journal of the European Union*.

(4) **Detailed bid specifications, including the bid evaluation criteria and a specification of their weighting, ensuring that the conditions referred to in Article 49k of the Geological and Mining Act of 9 June 2011 are fulfilled**

Bids may be submitted by entities in respect of which a decision has been issued confirming the positive outcome of a qualification procedure, as provided for in Article 49a(16)(2) of the Geological and Mining Act, independently, or as the operator if several entities are applying jointly for the concession.

Bids received will be evaluated by the bid evaluation committee on the basis of the following criteria:

30 % — financial capacities offering an adequate guarantee that activities relating to, respectively, the prospection and exploration of hydrocarbon deposits and the extraction of hydrocarbons will be carried out, and in particular the sources and methods of financing the intended activities, including the share of own funds and external financing;

25 % — technical capacities for, respectively, the prospection and exploration of hydrocarbon deposits and the extraction of hydrocarbons, and in particular the availability of appropriate technical, organisational, logistical and human resources potential;

20 % — scope and schedule of the geological works, including geological operations, or mining operations proposed;

10 % — experience in the prospection and exploration of hydrocarbon deposits or the extraction of hydrocarbons, ensuring safe operation, the protection of human and animal life and health, and environmental protection;

10 % — the proposed technology for conducting geological works, including geological operations, or mining operations, using innovative elements developed for this project;

5 % — scope and schedule of the mandatory collection of samples obtained during geological operations, including drill cores.

If, following the evaluation of bids on the basis of the criteria specified above, two or more bids obtain the same score, the amount of the fee for the establishment of mining usufruct rights due during the prospection and exploration phase will be used as an additional criterion allowing a final choice to be made between the bids concerned.

(5) **Minimum scope of geological information**

Concession data	Name of area: Sucha Beskidzka — Wiśniowa Location: onshore; concession blocks 412, 413, 432 and 433
Type of deposit	conventional oil and natural gas deposits
Structural levels	Carpathian orogen, West European platform
Petroleum systems	I — Paleozoic-Mesozoic bedrock petroleum system II — petroleum system developed in the Carpathian nappes; III — Carpathian Foredeep autochthonous Miocene petroleum system;
Source rocks	I — Lower Carboniferous carbonate and clastic rocks, Lower Carboniferous clastic rocks (Productive Carboniferous in paralic and limnic series), (?) Middle Jurassic claystones and mudstones; II — Lower Cretaceous Cieszyn, Wierzowice, Grodzisk and Lgota shales, Oligocene menilite shales; III — Carpathian and Lower Badenian fine-grained clastic rocks
Reservoir rocks	I — Cambrian sandstones; Lower Devonian limestones and Dolomites; Upper Devonian and Lower Carboniferous limestones and Dolomites; productive Carboniferous clastics; Upper Jurassic limestones; II — flysch of Magura Nappe, Dukla/Grybów Nappe, Subsilesian Nappe, Silesian Nappe III — Miocene foredeep sandstones and mudstones
Seal rocks	I — fine-grained Carboniferous formations, fine-grained Carpathian Foredeep autochthonous Miocene formations; II, III — fine-grained flysch formations, fine-grained Carpathian Foredeep autochthonous Miocene formations
Thickness of overburden	I — 2 000-4 500 m II — 500-1 000 m III — 2 000-3 800 m
Trap type	I — structural, stratigraphic II — structural or structural-lithological, lithological III — compaction anticlines, structural, stratigraphic
Deposits identified in the vicinity (NG — natural gas; OI — oil)	Lachowice — Stryszawa (NG, OI) — discovered in 1995, reserves and resources 240 000 000 m^3; Łapanów (NG) — discovered in 2008, cumulative production (2 years) 18 004 000 m^3; in 2015: production 17 920 000 m^3; reserves and resources (industrial: 307 280 000 m^3); Łąkta (NG, OI) — discovered in 1971, cumulative production: gas from gas horizons (40 years) 96 150 000 m^3, gas from condensate horizons (28 years) 721 380 000 m^3, condensate (30 years) 50 540 tonnes; in 2015: production — gas 3 020 000 m^3, oil — none, reserves and resources — gas 211 720 000 m^3, condensate 4 580 tonnes; Słopnice (NG, OI) — discovered in 1973, cumulative production (36 years): 42 020 000 m^3; in 2015: production — none, reserves and resources after 2012 — gas 80 000 000 m^3, condensate 1 500 tonnes, industrial resources after 2015 — none.

Seismic surveys completed (rightholder)	1972. Andrychów-Jordanów Myślenice-Wiśniowa Geofizyka Kraków Sp. z o.o. (Treasury); 1973. Andrychów-Myślenice Geofizyka Kraków Sp. z o.o. (Treasury); 1973. Andrychów-Myślenice-Rabka Geofizyka Kraków Sp. z o.o. (Treasury); 1976. Sucha-Rabka Geofizyka Kraków Sp. z o.o. (Treasury); 1978. Żywiec-Wadowice-Gdów Geofizyka Kraków Sp. z o.o. (Treasury); 1978-1984. Górnośląskie Zagłębie Węglowe Przeds. Bad. Geofiz. (Treasury); 1988. Niepołomice-Gdów-Myślenice Geofizyka Kraków Sp. z o.o. (Treasury); 1986-1989. Skoczów-Wadowice-Sucha [Wysoka] Geofizyka Kraków Sp. z o.o. (Treasury); 1986-1989. Skoczów-Wadowice-Sucha Geofizyka Kraków Sp. z o.o. (Treasury); 1989-1991. Dobczyce-Gdów-Wolica Geofizyka Kraków Sp. z o.o. (PGNiG S.A.); 1989-1991. Skoczów-Wadowice-Sucha Geofizyka Kraków Sp. z o.o. (PGNiG S.A.); 1992. Myślenice-Limanowa-Czchów Geofizyka Kraków Sp. z o.o. (PGNiG S.A.); 1993-1995. Lachowice-Myslenice Geofizyka Kraków Sp. z o.o. (PGNiG S.A.); 1993. Lachowice-Myslenice [Zagorzyce] Geofizyka Kraków Sp. z o.o. (PGNiG S.A.); 1994-1995. Myślenice-Limanowa-Czchów Geofizyka Kraków Sp. z o.o. (PGNiG S.A.); 1995. Żywiec-Wadowice Geofizyka Kraków Sp. z o.o. (PGNiG S.A); 1997-1998. Zawoja-Sucha Beskidzka Geofizyka Kraków Sp. z o.o. (PGNiG S.A.); 2001-2002. Raciechowice-Stadniki Geofizyka Kraków Sp. z o.o. (PGNiG S.A.); 2012. Karpaty West, Budzow Project Geofizyka Kraków Sp. z o.o. (Energia Karpaty Zachodnie)
Benchmark wells (TVD)	Potrójna IG-1 (3 701 m) Tokarnia IG-1 (3 936,5 m) Trzebunia IG-1 (3 053 m) Jordanów IG-1 (3 877,0 m)

(6) **Commencement date of activities**

The activities covered by the concession will commence within 14 days from the date on which the decision granting the concession becomes final.

(7) **Conditions for granting the concession, in particular concerning the amount, scope and manner of providing the security referred to in Article 49x(1) of the Geological and Mining Act and, where justified, the amount, scope and manner of providing the security referred to in Article 49x(2) of that Act**

The successful bidder is required to provide a security covering non-compliance or inadequate compliance with the conditions laid down in the concession and for financing the closure of mine workings if the concession expires, is withdrawn or becomes invalid. This security is to be provided for the period from the date on which the concession is granted until the end of the prospection and exploration phase. The amount of the security is PLN 100 000. The form and date of its payment are governed by Article 49x(4) and (5) of the Geological and Mining Act.

(8) **Minimum scope of geological works, including geological operations, or mining operations**

The minimum programme of geological works proposed for the prospection and exploration phase comprises:

Stage I duration: 12 months

scope: interpreting and analysing archival geological data

Stage II duration: 12 months

scope: geophysical surveys — 2D seismic test (excitation line 50 km in length)

Stage III duration: 24 months

scope: drilling one borehole to a maximum depth of 4 500 m, with mandatory coring of prospective intervals

Stage IV duration: 12 months

scope: analysing the data obtained.

(9) **Period for which the concession is to be granted**

The concession period is 10 years, including:

— a prospection and exploration phase of five years' duration, starting from the date on which the concession is granted,

— an extraction phase of five years' duration, starting from the date on which an investment decision is obtained.

(10) **Specific conditions for carrying out the activities and for ensuring public safety, public health, environmental protection and rational management of deposits**

Implementation of the concession work programme must not infringe landowners' rights and does not eliminate the need to comply with other requirements laid down in legislation, in particular the Geological and Mining Act, and requirements regarding spatial planning, environmental protection, agricultural land and forests, nature, waters and waste.

(11) **Model agreement on the establishment of mining usufruct rights**

The model agreement is attached as an annex hereto.

(12) **Information concerning the amount of the fee for establishing mining usufruct rights**

The minimum amount of the fee for establishing mining usufruct rights for the 'Sucha Beskidzka — Wiśniowa' area during the five-year base period is PLN 212 178,15 (in words: two hundred and twelve thousand, one hundred and seventy-eight zlotys, fifteen grosz) per annum. The annual fee for establishing mining usufruct rights for the purpose of the prospection and exploration of minerals is indexed to average annual consumer price indices set cumulatively for the period from the conclusion of the agreement until the year preceding the date for payment of the fee, as announced by the President of the Central Statistical Office in the *Monitor Polski* (Official Gazette) (Article 49h(3)(12) of the Geological and Mining Act).

(13) **Information concerning requirements to be met by bids and documents required from bidders**

1. Bids should specify:

(1) the name (business name) and the registered office of the bidder;

(2) the subject of the bid, together with a description specifying the area within which the concession is to be granted and mining usufruct rights are to be established;

(3) the period for which the concession is to be granted, the duration of the prospection and exploration phase and the commencement date of the activities;

(4) the aim, scope and nature of geological works, including geological operations, or mining operations, and information about the works to be carried out to achieve the intended objective and the technologies to be used;

(5) a schedule, broken down into years, for geological works, including geological operations, and the scope of such works;

(6) the scope and schedule of the mandatory collection of samples obtained during geological operations, including drill cores, as referred to in Article 82(2)(2) of the Geological and Mining Act;

(7) rights held by the bidder to the real property (area) within which the intended activities are to be carried out, or the right for the establishment of which that entity is applying;

(8) a list of areas covered by nature conservation schemes; this requirement does not concern projects for which a decision on environmental conditions is required;

(9) the way in which the adverse environmental impacts of the intended activities are to be counteracted;

(10) the scope of the geological information available to the bidder;

(11) experience in the prospection and exploration of hydrocarbon deposits or the extraction of hydrocarbons, ensuring safe operation, the protection of human and animal life and health, and environmental protection;

(12) technical capacities for, respectively, the prospection and exploration of hydrocarbon deposits and the extraction of hydrocarbons and, in particular, the availability of appropriate technical, organisational, logistical and human resources potential;

(13) financial capacities offering an adequate guarantee that activities relating to, respectively, the prospection and exploration of hydrocarbon deposits and the extraction of hydrocarbons will be carried out, and in particular the sources and methods of financing the intended activities, including the share of own funds and external financing;

(14) the proposed technology for conducting geological works, including geological operations, or mining operations;

(15) the proposed amount of the fee for establishing mining usufruct rights, this being not less than the amount specified in the notice launching the bidding procedure;

(16) the proposed form of providing security, as referred to in Article 49x(4) of the Geological and Mining Act;

(17) if a bid is submitted jointly by several entities, it must additionally specify:

(a) the names (business names) and the registered offices of all the entities submitting the bid;

(b) the operator;

(c) the percentage shares in the costs of geological works, including geological operations, proposed in the cooperation agreement.

2. Bids submitted in a bidding procedure should meet the requirements and conditions laid down in the notice launching that bidding procedure.

3. The following documents are to be enclosed with bids:

(1) evidence of the existence of the circumstances described in the bid, in particular extracts from the relevant registers;

(2) proof that a deposit has been lodged;

(3) a copy of the decision confirming the positive outcome of a qualification procedure, as provided for in Article 49a(17) of the Geological and Mining Act;

(4) graphical annexes prepared in accordance with the requirements relating to mining maps, indicating the country's administrative boundaries;

(5) written undertakings to make technical resources available to the entity taking part in the bidding procedure if other entities' technical resources are used when implementing the concession;

(6) two copies of the geological operations project file.

4. Bidders may, on their own initiative, provide additional information in their bids or attach additional documents thereto.

5. Documents submitted by bidders should be originals or certified true copies of originals as provided for in the Code of Administrative Procedure. This requirement does not apply to copies of documents which are to be attached to bids and were created by the concession authority.

6. Documents drawn up in a foreign language should be submitted together with a translation into Polish by a sworn translator.

7. Bids are to be submitted in a sealed envelope or a sealed package bearing the name (business name) of the bidder and indicating the subject of the bidding procedure.

8. Bids submitted after the expiry of the time limit for the submission of bids will be returned to the bidders unopened.

(14) **Information concerning the manner of lodging a deposit, the amount of the deposit and the payment date**

Bidders are required to lodge a deposit of PLN 1 000 (in words: one thousand zlotys) before the expiry of the time limit for the submission of bids.

SECTION IV: ADMINISTRATIVE INFORMATION

IV.1) **Bid evaluation committee**

A bid evaluation committee is appointed by the concession authority for the purpose of conducting the bidding procedure and selecting the most advantageous bid. The composition and rules of procedure of the committee are specified in the Cabinet Regulation of 28 July 2015 on bidding procedures for concessions for the prospection and exploration of hydrocarbon deposits and the extraction of hydrocarbons, and for concessions for the extraction of hydrocarbons (Journal of Laws 2015, item 1171). The bid evaluation committee submits a report on the bidding procedure to the concession authority for approval. Together with bids and all documents related to the bidding procedure, the report is open to other entities submitting bids.

IV.2) **Additional explanations**

Within seven days from the date of publication of the notice, an interested entity may request the concession authority to provide explanations concerning the detailed bid specifications. Within seven days from the receipt of the request, the concession authority will publish the explanations in the *Biuletyn Informacji Publicznej* (Public Information Bulletin), on the page of the administrative office subordinate to that authority.

IV.3) **Additional information**

Full information about the area covered by the bidding procedure has been compiled by the Polish Geological Service in the *Pakiet danych geologicznych* (Geological Data Pack), which is available on the Ministry of the Environment website (www.mos.gov.pl) and from

Departament Geologii i Koncesji Geologicznych (Geology and Geological Concessions Department)

Ministry of the Environment

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ANNEX

AGREEMENT

establishing mining usufruct rights for the prospection and exploration of oil and natural gas deposits and the extraction of oil and natural gas in the 'Sucha Beskidzka — Wiśniowa' area, hereinafter referred to as 'the Agreement'

concluded at Warsaw on …… between:

the State Treasury, represented by the Minister for the Environment, for and on behalf of whom Mr Mariusz Orion Jędrysek, State Secretary at the Ministry of the Environment and Chief Geologist of Poland, acts under power of attorney No 69 of 12 June 2017, hereinafter referred to as 'the Treasury',

and

XXX having its registered office at: …… (full address), registered …… under KRS (National Court Register) No …… , share capital …… , represented by …….., hereinafter referred to as 'the Holder of Mining Usufruct Rights',

hereinafter each referred to singly as 'a Party' or jointly as 'the Parties',

worded as follows:

Section 1

1. The Treasury, as exclusive owner of the substrata of the Earth's crust covering the area within the municipalities of: Czernichów, Mszana Dolna, Pcim, Lubień, Raciechowice, Tokarnia, Wiśniowa, Jordanów, Bystra-Sidzina, Budzów, Zawoja, Stryszawa, Zembrzyce, Brzeźnica, Stryszów, Mucharz, Lanckorona, Spytkowice and Tomice, the towns and municipalities of: Dobczyce, Myślenice, Sułkowice, Rabka-Zdrój, Maków Podhalański, Wadowice and Kalwaria Zebrzydowska, and the towns of: Mszana Dolna, Jordanów and Sucha Beskidzka in Małopolskie Province, the boundaries of which are defined by lines joining points (1) to (13) having the following coordinates in the PL-1992 coordinate system:

No	Coordinates	
	X	Y
1	237 088,562	543 233,918
2	230 254,640	543 416,610
3	218 462,260	543 731,870
4	218 661,710	552 238,180
5	219 634,170	553 786,280
6	218 677,070	553 795,860
7	218 918,270	574 085,440
8	221 028,900	577 051,280
9	221 144,840	580 743,360
10	219 005,580	580 176,250
11	199 583,780	580 168,790
12	200 075,620	536 193,520
13	237 064,531	535 946,928

hereby establishes mining usufruct rights for the Holder of Mining Usufruct Rights in the area described above, limited above by the lower boundary of surface land properties and below at a depth of 4 500 m, provided that the Holder of Mining Usufruct Rights obtains a concession for the prospection and exploration of oil and natural gas deposits and the extraction of oil and natural gas in the 'Sucha Beskidzka — Wiśniowa' area within one year from the date of the Agreement being concluded.

2. If the condition of obtaining the concession referred to in paragraph 1 is not met, the obligations arising under the Agreement shall expire.

3. Within the rock mass area specified in paragraph 1, the Holder of Mining Usufruct Rights may:

   (1) in Cambrian, Devonian, Carboniferous, Jurassic, Cretaceous, Palaeogene and autochthonous Miocene formations, carry out activities relating to the prospection and exploration of oil and natural gas deposits;

   (2) in the rest of the area, carry out any operations and activities that are necessary in order to gain access to the Cambrian, Devonian, Carboniferous, Jurassic, Cretaceous, Palaeogene and autochthonous Miocene formations.

4. The surface area of the vertical projection of the area described above is 981,67 km^2.

5. The mining usufruct rights shall entitle the Holder of Mining Usufruct Rights to use the area specified in paragraph 1 on an exclusive basis for the prospection and exploration of oil and natural gas deposits, as well as for carrying out all operations and activities necessary for this purpose within that area in accordance with the legislation in force, in particular the Geological and Mining Act of 9 June 2011 (*Dziennik Ustaw* (Journal of Laws) 2017, item 2126), and decisions issued pursuant thereto.

Section 2

The Holder of Mining Usufruct Rights declares that it raises no objections to the factual and legal status of the subject of the mining usufruct rights.

Section 3

1. The Agreement shall take effect on the date on which the concession is obtained.

2. The mining usufruct rights shall be established for a period of 10 years, including five years for the prospection and exploration phase and five years for the extraction phase, subject to Sections 8(2) and 10.

3. The mining usufruct rights shall expire if the concession expires, is withdrawn or becomes invalid, irrespective of the reason.

Section 4

The Holder of Mining Usufruct Rights undertakes to notify the Treasury in writing of any changes resulting in a change of name, registered office and address or organisational form, changes in registration and identification numbers, the transfer of the concession to another entity by operation of law, the filing of a bankruptcy petition, the declaration of bankruptcy or the initiation of restructuring proceedings. The Treasury may require that the necessary explanations be provided in such cases. Notification shall take place within 30 days from the date on which the circumstances referred to above occur.

Section 5

The Agreement shall be without prejudice to the rights of third parties, in particular owners of land, and the Holder of Mining Usufruct Rights shall not be exempt from the need to comply with the requirements provided for by law, in particular those relating to the prospection and exploration of minerals and the protection and use of environmental resources.

Section 6

The Treasury reserves the right to establish within the area referred to in Section 1(1) mining usufruct rights for the purpose of carrying out activities other than those specified in the Agreement, in a manner which does not infringe the rights of the Holder of Mining Usufruct Rights.

Section 7

1. The Holder of Mining Usufruct Rights shall pay the Treasury the following fee for the mining usufruct rights in the area specified in Section 1(1) for each year of the prospection and exploration phase of mining usufruct (counted as 12 consecutive months):

   (a) PLN ..... *(amount) (in words:* ..... *zlotys)* for the ..... *(specify in words the ordinal number)* year of usufruct, counting from the date on which the Agreement took effect, within 30 days from the beginning of that year of mining usufruct;

   (b) PLN ..... *(amount) (in words:* ..... *zlotys)* for the ..... *(specify in words the ordinal number)* year of usufruct, counting from the date on which the Agreement took effect, within 30 days from the beginning of that year of mining usufruct;

   (c) PLN ..... *(amount) (in words:* ..... *zlotys)* for the ..... *(specify in words the ordinal number)* year of usufruct, counting from the date on which the Agreement took effect, within 30 days from the beginning of that year of mining usufruct;

   (d) PLN ..... *(amount) (in words:* ..... *zlotys)* for the ..... *(specify in words the ordinal number)* year of usufruct, counting from the date on which the Agreement took effect, within 30 days from the beginning of that year of mining usufruct;

   (e) PLN ..... *(amount) (in words:* ..... *zlotys)* for the ..... *(specify in words the ordinal number)* year of usufruct, counting from the date on which the Agreement took effect, within 30 days from the beginning of that year of mining usufruct,

   — subject to the provisions of paragraph 2.

2. If the date for payment of the fee due for a given year of mining usufruct falls between 1 January and 1 March, the Holder of Mining Usufruct Rights shall pay the fee by 1 March. However, if the fee is subject to indexation in accordance with paragraphs 3 to 5, the Holder of Mining Usufruct Rights shall pay it no earlier than the date on which the index referred to in paragraph 3 is announced, after taking that index into account.

3. The fee specified in paragraph 1 shall be indexed to the average annual consumer price indices set for the period from the conclusion of the Agreement until the year preceding the date for payment of the fee, as announced by the President of the Central Statistical Office in the Official Gazette of the Republic of Poland *Monitor Polski*. If this index for a given year is less than or equal to zero, there shall be no indexation for that year.

4. If the date for payment of the fee falls in the same calendar year as that in which the Agreement was concluded, the fee shall not be indexed.

5. If the Agreement was concluded and took effect in the year preceding the year in which the date for payment of the fee falls, the fee shall not be indexed if the Holder of Mining Usufruct Rights pays it by the end of the calendar year in which the Agreement is concluded and takes effect.

6. If the Holder of Mining Usufruct Rights loses the mining usufruct rights established under the Agreement before the time limit specified in Section 3(2) expires, the Holder of Mining Usufruct Rights shall be required to pay the fee for the entire year of usufruct in which these rights were lost. If, however, the mining usufruct rights are lost as a result of the concession being withdrawn or for the reasons specified in Section 10(1), (3) or (4), the Holder of Mining Usufruct Rights shall pay the fee for the entire usufruct period specified in Section 3(1) and (2), indexed in accordance with paragraph 3 and without prejudice to the contractual penalty referred to in Section 10(2). The fee shall be paid within 30 days from the date on which the mining usufruct rights were lost. The loss of usufruct rights shall not release the Holder of Mining Usufruct Rights from environmental obligations relating to the subject of the mining usufruct rights, in particular obligations relating to the protection of deposits.

7. The Holder of Mining Usufruct Rights shall pay the fee for the mining usufruct rights into the bank account of the Ministry of the Environment at the Warsaw branch of the National Bank of Poland, No 07 1010 1010 0006 3522 3100 0000, giving the following message on the transfer order: 'Establishment of mining usufruct rights in connection with the granting of a concession for the prospection and exploration of oil and natural gas deposits and the extraction of oil and natural gas in the "Sucha Beskidzka — Wiśniowa" areafg'.

   The date of payment shall be the date on which the Treasury's account is credited.

8. The fee specified in paragraph 1 shall not be subject to VAT. If legislation is amended with the result that the activities which are the subject of the Agreement are subject to taxation, or if the interpretation of legislation changes with the result that those activities are subject to VAT, the amount of the fee shall be increased by the amount of tax due.

9. The Treasury shall notify the Holder of Mining Usufruct Rights in writing of changes to the account number referred to in paragraph 7.

10. The fee for the establishment of mining usufruct rights shall be payable to the Treasury irrespective of the income which the Holder of Mining Usufruct Rights earns from using those rights.

11. The Holder of Mining Usufruct Rights shall send the Treasury, within seven days from the payment date, copies of proof of payment of the fee referred to in paragraph 1 for the establishment of the mining usufruct rights.

Section 8

1. After the Holder of Mining Usufruct Rights obtains an investment decision specifying the conditions for the extraction of oil or natural gas, the Parties shall, within 30 days from the date of that decision, sign an addendum to the Agreement specifying the conditions for the implementation of the Agreement during the extraction phase and the amount of the fee for mining usufruct rights in the area specified in Section 1(1) for each year of mining usufruct during the extraction phrase.

2. If, within 30 days of the date of the investment decision specifying the conditions for the extraction of oil or natural gas the addendum referred to in paragraph 1 has not been concluded, the mining usufruct rights shall expire.

Section 9

The Holder of Mining Usufruct Rights may exercise the mining usufruct rights established in Section 1(1) only after obtaining written consent from the Treasury.

Section 10

1. If the Holder of Mining Usufruct Rights infringes obligations laid down in the Agreement, the Treasury may, subject to the provisions of paragraphs 3 and 4, terminate the Agreement with immediate effect, without the Holder of Mining Usufruct Rights being entitled to make any property claims. However, the Agreement may not be terminated if the Holder of Mining Usufruct Rights has infringed obligations under the Agreement due to *force majeure*.

2. If the Agreement is terminated for the reasons specified in paragraphs 1 or 4, the Holder of Mining Usufruct Rights shall pay the Treasury a contractual penalty of 25 % of the fee for the entire prospection and exploration phase of mining usufruct, as specified in Section 3(1) and (2), indexed in accordance with Section 7(3).

3. If the Holder of Mining Usufruct Rights delays payment of the fee by more than seven days beyond the deadlines specified in Section 7(1) or (2), the Treasury shall request the Holder of Mining Usufruct Rights to pay the outstanding fee within seven days from the receipt of the request, failing which the Agreement will be terminated with immediate effect.

4. If the Holder of Mining Usufruct Rights fails to inform the Treasury of the events referred to in Section 4 within 30 days of their occurrence, the Treasury may impose on the Holder of Mining Usufruct Rights a contractual penalty of 5 % of the fee for the entire prospection and exploration phase of mining usufruct for each instance of failure to provide information, or terminate the Agreement in whole or in part, subject to 30 days' notice effective at the end of the calendar month.

5. The Holder of Mining Usufruct Rights shall be bound by the Agreement until the date of expiry, withdrawal or invalidity of the concession and may not terminate the Agreement.

6. The Agreement shall be terminated in writing, failing which the termination shall not be valid.

7. The Parties agree that if the Treasury terminates the Agreement, the fee paid for the mining usufruct rights referred to in Section 7(1) shall not be reimbursed.

8. The Treasury reserves the right to seek compensation in excess of the amount of contractual penalties on general terms if the amount of damage incurred by the Treasury exceeds the contractual penalties.

Section 11

1. The Parties have provided the following contact details for any correspondence:

   (1) Treasury:

   Ministry of the Environment, ul. Wawelska 52/54, 00-922 Warsaw, Poland.

   (2) Holder of Mining Usufruct Rights:

   (address).

2. The Parties are obliged to inform each other in writing without delay of any change to the contact details indicated in paragraph 1. Such a change shall not require an addendum to the Agreement. Correspondence sent to a Party's most recently provided contact details shall be deemed to have been effectively served on the other Party.

3. Each of the Parties shall serve correspondence on the other Party in person, by courier or by registered letter using the contact details most recently provided by the Party.

4. Registered letters sent to the most recently provided address of a Party and returned by the post office or courier company owing to the addressee not having collected it on time shall be treated as having been effectively served once fourteen days have passed from the first delivery attempt.

Section 12

1. The parties shall not be liable for failure to comply with obligations under the Agreement resulting from *force majeure* if it can be proven that damage caused by *force majeure* influenced the failure to comply with the obligations. *Force majeure* shall mean an external event that the Parties could not have predicted or prevented that makes it impossible for the Agreement to be implemented in whole in part, permanently or for a given period, which a Party could not have counteracted by exercising due diligence and which did not result from errors or negligence on the part of the Party affected by it.

2. In the event of *force majeure*, the Parties shall immediately make every effort to agree on a course of action.

Section 13

The Holder of Mining Usufruct Rights may apply for extension of the Agreement, in whole or in part, and must do so in writing, failing which the application will be invalid.

Section 14

If the Agreement is terminated, the Holder of Mining Usufruct Rights shall not be entitled to make any claims against the Treasury for an increase in the value of the subject of the mining usufruct rights.

Section 15

Any disputes arising out of the Agreement shall be resolved by the ordinary court having geographical jurisdiction over the seat of the Treasury.

Section 16

This Agreement shall be governed by Polish law, in particular the provisions of the Geological and Mining Act and of the Civil Code.

Section 17

The Holder of Mining Usufruct Rights shall bear the costs of concluding the Agreement.

Section 18

Amendments to the Agreement shall be made in writing, failing which they shall not be valid.

Section 19

The Agreement has been drawn up in three identical copies (one copy for the Holder of Mining Usufruct Rights and two copies for the Minister for the Environment).

Treasury **Holder of Mining Usufruct Rights**