



Assessment of the Law of Ukraine No 3613 On amendments to the Customs Code of Ukraine and other laws of Ukraine on the specifics of customs control and customs clearance of certain categories of goods – focus on biomethane

by the Energy Community Secretariat

July, 2024

PURPOSE STATEMENT

Assessment of the amendments to the Customs Code of Ukraine enacted by Law No. 3613 of 20 March 2024, which aim to remove obstacles to the export of biomethane from Ukraine.

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Ukraine Energy Market Observatory

Assessment 12/24

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Background

Ukraine has over 80 biogas plants, with a total installed capacity of 140 MW. Biogas has been used for electricity production for many years, contributing to the national RES-e targets. The acceptance of biomethane by gas networks has been regulated by the gas legislative framework and is compliant with Directive 2009/73/EC. Technical safety and gas quality requirements must be fulfilled to enable injection. However, it was always more economical to produce biogas and use it under the RES electricity feed-in regime than to produce biomethane and inject it into the gas networks. This changed in 2022 when several factors triggered intensive biomethane developments in Ukraine:

- Extreme high prices of natural gas in 2022, which made investments in biomethane upgrading facilities attractive for numerous Ukrainian biogas producers;
- Significant potential in Ukraine for biomethane production (crop residues, maize silage, livestock manure, food & beverage production, municipal waste & wastewater treatment) – potential production of 1 Bcm¹ in 2030, growing up to 20 Bcm in 2050² - may serve as an alternative way of diversifying the gas supply complementary to the increase of domestic gas production;
- Threats to the security of natural gas supply for Europe after the full-scale Russian invasion in Ukraine, resulting in the *REPowerEU*³. The policy document, which sets the target of 35 Bcm biomethane by 2030, simultaneously addresses the security of gas supply and the decarbonization agenda. The EU policy act underlines the potential need for import to the EU, i.e., the importance of export from Ukraine.

¹ Current biomethane production in the EU is at the annual level of 3 Bcm

² According to UABIO presentation at the [Business Forum on Ukraine Renewable Gases - Energy Community Homepage \(energy-community.org\)](#)

³ [Key documents: REPowerEU - European Commission \(europa.eu\)](#), Communication REPowerEU Plan COM(2022)230 as of 18 May 2022

With the introduction of martial law due to Russian aggression against Ukraine, the Cabinet of Ministers of Ukraine adopted a ban on the export of gas of Ukrainian origin. Implicitly, this decision created a burden on biogas exports as well.⁴

Mutual interests and potentials to develop and trade biomethane have been acknowledged by the *Memorandum of Understanding (MoU) signed between Ukraine and the European Union on a Strategic Partnership on Biomethane, Hydrogen and other Synthetic Gases*⁵ in February 2023. The Business-to-Business Forum⁶, organized by the Energy Community Secretariat in Vienna in September 2023 upon the European Commission's request, was an MoU milestone, successfully linking European and Ukrainian stakeholders in one place.

The Forum as such, as well as intensive communication in different formats with relevant stakeholders, underlined challenges that can be grouped as follows:

- Certification of biomethane sustainability in Ukraine;
- Ban of export (natural) gas produced in Ukraine;
- Acceptance by the EU of biomethane and related documents from Ukraine

Introduction

Directives on promoting the use of energy from renewable sources—2009/28/EC (RED) and (EU) 2018/2001 (RED II) —were adopted for the Energy Community in 2012 and 2021, respectively. Ukraine, as a Contracting Party to the Energy Community, had an obligation to implement the certification of biofuels' compliance with the sustainability criteria by 1 January 2014.

Ukraine has in force primary legislation on alternative fuels since 2000, when Law No.1391 was adopted⁷. Law No.1391 defines the legal, social, economic, ecological and organizational principles of production (extraction) and use of alternative fuel types, as well as stimulation of increasing the share of their use to 20 percent of the total fuel consumption volume in Ukraine by 2020. Since its adoption, Law No.1391 has been amended several times, including by complementing the categories of biofuels. However, the precise definition of biomethane⁸ was introduced to the Law No.1391 only in 2021 by the Law “On amendments to some laws of Ukraine regarding the development of biomethane production” (Law No.1820-IX).

The provisions on sustainability criteria were transposed by Law No.1391 and amendments, but sustainability certification has never been established. Ukraine did not fulfill its own renewable target in transport (RES-T) by 2020.

However, Ukraine has contributed significantly to the production of liquid biofuels and the fulfillment of RES-T targets of the EU Member States despite not having a functional national system to certify sustainability in place. That has been enabled under the international Voluntary Industrial Schemes, recognized by the European Commission, compliant with RED

⁴ Ukraine Energy Market Observatory Assessment 1/2024,

<https://www.energy-community.org/dam/jcr:f9d7a554-aaa9-48ff-ac4b-c7802eb90500/Note1.pdf>

⁵ [Memorandum of understanding between the European Union and Ukraine on a Strategic Partnership on Biomethane, Hydrogen and other Synthetic Gases - European Commission \(europa.eu\)](#)

⁶ [Business Forum on Ukraine Renewable Gases - Energy Community Homepage \(energy-community.org\)](#)

⁷ <https://zakon.rada.gov.ua/laws/show/1391-14#Text>

⁸ biomethane - biogas, which according to its physical and chemical characteristics meets the requirements of legal acts for natural gas for supply to the gas transportation or gas distribution system or for use as motor fuel

and RED II, to prove the sustainability of biofuels regardless of production location - biofuels produced in the EU or imported to the EU. Thus, biofuel producers in Ukraine joined the international schemes and, for more than a decade, were exported to the EU. The same model was used for biomethane produced in Ukraine, which was liquified and exported for the first time to Germany last year.

Regulatory framework governing renewable gases in Ukraine

Several legal acts in the last three years set up the basis for the biomethane developments.

The Law of Ukraine “On Amendments of some Laws of Ukraine regarding the development of biomethane production”⁹ introduced the term biomethane and established a system of guarantees of origin and a register for renewable gases. The Resolution of the Cabinet of Ministers in July 2022 defined the details of the biomethane register¹⁰ and the Amendments to the Law on Renewables in 2023 determined the State Agency for Energy Efficiency and Energy Savings (SAEE) as a body responsible for a Register to be operational by the end of 2023. However, the establishment of the Register, and consequently, the issuing of Guarantees of Origin (GO) for biomethane, is still pending.

The Law of Ukraine “On state support of investment projects with significant investments in Ukraine”¹¹ as of August 2023, recognized the importance of biomethane production, allowing specific tax and customs exemptions for imported equipment, prioritizing the right of land use, and determining criteria for some budgetary funds and compensations.

The provisions on acceptance of biomethane by the natural gas networks, as required by the Gas Directive, have been transposed and implemented in Ukraine by the Gas Law¹² and the Gas Transmission¹³ and Distribution¹⁴ codes. The Codes were amended in 2022 to adjust higher oxygen content to be easier for the biomethane producers in Ukraine to achieve without hindering safety requirements.

The state-owned enterprise Ukrainian Research and Training Centre for Standardization, Certification and Quality Problems has adopted the state standard for the injection of biomethane into distribution and trunk gas networks, developed based on the EU standard, EN 16723-1:2023 “Natural gas and biomethane for use in transport and biomethane for injection in the natural gas network”. The first injection of biomethane to the natural gas distribution grid was successfully done in spring 2023 and consumed locally.

The ban on exporting natural gas produced in Ukraine added a certain complexity to bigger biomethane development and potential export as the most attractive usage. The challenge relate to delineating natural gas/methane and biomethane, and to establish custom procedures for biomethane export.

⁹ <https://zakon.rada.gov.ua/laws/show/1820-20#Text>

¹⁰ <https://zakon.rada.gov.ua/laws/show/823-2022-%D0%BF#Text>

¹¹ <https://zakon.rada.gov.ua/laws/show/1116-20#Text>

¹² <https://zakon.rada.gov.ua/laws/show/329-19#n1378>

¹³ <https://zakon.rada.gov.ua/laws/show/z1378-15#Text>

¹⁴ <https://zakon.rada.gov.ua/laws/show/z1379-15#Text>

The Law of Ukraine (No 3613) on amendments to the Customs Code of Ukraine and other laws of Ukraine

Law No. 3613¹⁵ addresses two main obstacles to biomethane export: the nonexistence of a sustainability certification system and the ban on natural gas export. The Law stipulates the same custody rules for biomethane as for natural gas when exported via a natural gas network, recognising that biomethane and natural gas are different products.

The Law amends Article 232 of the Customs Code by defining that the customs procedure for biomethane when exported through the natural gas grids is *“carried out in accordance with the procedure provided for by the legislation of Ukraine on customs affairs for natural gas”* and the volume of biomethane is expressed in *“units of energy <.>, based on data at entry points and exit points located on the customs border of Ukraine”*. Those provisions ensure consistency in the treatment of different gases transported through the same interconnection points of the gas transmission system.

Further, the amendments to Article 232 of the Customs Code require documents by which biomethane can be cleared at the borders - periodical and additional declaration in line with the Law on Alternative Fuels, i.e., register number account of a particular biomethane producer and guarantees of origin for a specific volume of biomethane. However, it has been acknowledged that the Register is still not established and that guarantees of origin from third countries are not recognized by the EU. Thus, to avoid blockade to potential biomethane export, the Final and Transitional Provisions of the Customs Code have been amended, allowing the documents issued within the international voluntary industrial schemes (certificate of compliance for the production facility and proof of sustainability for product) to be used as border declarations, instead of documents issued by the national Register. A transitional period will last until all three conditions are in place: the national register is established, the national register is joined to the Union Data Base under RED III, and the GO is issued in Ukraine and recognized in the EU.

In the absence of a national sustainability certification system, reliance on international voluntary industrial schemes has been reflected in the Amendments to the Law on alternative fuels (an integral part of Law No 3613). The definitions of international voluntary industrial schemes and relevant documents (certificate of compliance for the production facility and proof of sustainability for the product) have been introduced, as well as communication between SAEE and the customs authorities once the Register is established. The amendments to the Law on Alternative Fuels acknowledge a need for recognition of Ukrainian GO by the EU and inclusion of the Ukrainian national register within the EU Union Data Base, in the same manner as the amendments to the Customs Code does.

The Final Provisions include the possibility of expressing biomethane in energy units, following the need to do so for cross-border flows, and the installation of an automatic chromatograph as a precondition for injection into the gas distribution and transmission network.

The amendments to the Final Provisions of the Law on Alternative Fuels introduce an obligation for biomethane producers to store biomethane for one month before starting export. This initial storage and a month of delay in export ensure a balance of biomethane injected into the gas network and exported via interconnectors, i.e., guarantee that exporting biomethane volumes will not be replaced with natural gas in daily flows.

¹⁵ <https://zakon.rada.gov.ua/laws/show/3613-20#Text>

Impacts on the markets and stakeholders in Ukraine

Law No. 3613 is focused exclusively on the biomethane export from Ukraine, not on the developments of biomethane usage in the country and contributing to the national RES targets and decarbonization. It removes obstacles to biomethane export from the Ukraine side by delineating natural gas and biomethane when transported via the same interconnection points, while still applying the same customs procedure and allowing documents proving sustainability to be issued outside the national system until the system is established.

However, deblocking of biomethane exiting from Ukraine still does not mean acceptance on the other side of the border, i.e. by the EU and its Member States.

Acceptance by the EU of biomethane and related documents from Ukraine

Gas Directive 2009/73/EC defines technical and safety compliance as preconditions for acceptance of renewable gases, including biomethane, by the natural gas grids: *“Member States should take concrete measures to assist the wider use of biogas and gas from biomass, the producers of which should be granted non-discriminatory access to the gas system, provided that such access is compatible with the relevant technical rules and safety standards on an ongoing basis. < > Member States should ensure that, taking into account the necessary quality requirements, biogas and gas from biomass or other types of gas are granted non-discriminatory access to the gas system, provided such access is permanently compatible with the relevant technical rules and safety standards. Those rules and standards should ensure that those gases can technically and safely be injected into, and transported through the natural gas system and should also address their chemical characteristics.”*

Biomethane has been successfully injected for decades in the national grids of different EU Member States. Cross-border trade and the need to proof sustainability and non-fossil origins added complexity within the EU and import flows.

RED II introduced a system of guarantees of origin (GO) for electricity produced from renewable energy sources for renewable gases transported by the grids in the EU, keeping at the same time the sustainability certification for all biofuels, including gaseous, used in the transport sector. The Union Data Base, also imposed by RED II, has to include both models within the unique system for the European Union by 21 November 2024.

For the time being, the EU Member States, cannot accept GO (for electricity and for gases) issued by the third countries, including the Contracting Parties to the Energy Community. The European Commission (EC) launched the process of mutual recognition of GO at the last Ministerial Council in December 2023, but only for RES electricity. It is meant to be in place first for RES electricity and then to add GO for renewable gases under certain conditions by 2027. Ukraine has proposed to include GO for renewable gases in the same manner as for electricity, still this year at the Ministerial Council of the Energy Community.

In parallel, in direct communication between Ukraine and the EC within the roadmap' development to implement MoU on strategic partnership on renewable gases, an agreement on mutual recognition of GO for gases, has been proposed, to be in place by 2025.

The third initiative focused on the same issue – recognition of GO for gases from Ukraine – is Task Force 6 of the Biomethane Industrial Partnership (BIP TF6)¹⁶, launched by the EC.

¹⁶ [Task Force 6 - BIP Europe \(bip-europe.eu\)](https://bip-europe.eu)

What is, for the time being, possible and also proven by practice, is the import of liquefied biomethane, transported by trucks from Ukraine and certified under the RED II voluntary industrial scheme, in the same manner as has been successfully performed for liquid biofuels in the transport sector for a decade.

Compliance Assessment

Law 3613 determines requirements for custom procedures not within the scope of the acquis mandatory for the Energy Community, i.e., for Ukraine. The determined custom procedures do not discriminate natural gas and biomethane, i.e., renewable gases transported via the same gas networks, and as such, can be assessed as compliant.

Law No.3613 amends the Law defining renewables, acknowledging the existence of the documents issued by the Voluntary Industrial Schemes recognised in the European Union. The introduction of the Voluntary Industrial Schemes is compliant with RED II, but this is done exclusively considering the export and customs office requirements, not actually upgrading the national sustainability certification system, whose full implementation is still pending.

The provisions obliging biomethane producers to store their gas for one month before exporting could be considered as potentially discriminatory and create additional costs for producers for access to storage capacities and thus not compliant with Directive 2009/73/EC when export and free transfer of natural gas through the same pipelines will be re-established. However, the balancing of biomethane, within the mass balancing system and Union Data Base establishment, is still under discussion in the EU, and it is not clear if the solution as put in place by Ukraine would not be introduced at the EU level as well.

Conclusions and Recommendations

Ukraine made several national legislative changes to overcome barriers to biomethane export.

The gas quality requirements accepted by the gas grids have been changed to accommodate the oxygen content that biomethane producers can reach without further investments in purification and without compromising safety in the grid.

Biomethane and natural gas have been delineated as products to overcome the ban on exporting natural gas produced in Ukraine, which is considered a security of supply measure during war conditions. The best solution would be to cancel the ban and inject biomethane into the grids under functional gas market conditions. But, in given circumstances, considering biomethane as a different product just for the customs procedure and crossing the border seems like a workable solution.

The delay in the establishment of the Register has been overcome by the acceptance by the custom authorities of documents issued under the international voluntary industrial schemes.

Mandatory storing of produced biomethane for one month should ensure a balance of injected and exported biomethane and avoid the addition of natural gas volumes to renewable methane molecules. Expressing biomethane measurement in energy units, which is important at interconnection points, has been stipulated, and determining gas composition and quality at the injection to the gas grids.

The problem of non-acceptance of GO for gases from Ukraine exported to the EU is the focus of several processes – within the Energy Community, BIP TF6, and bilateral negotiation

between Ukraine and the EU. It has to be ensured that those three processes do not lead to contradictory solutions and different timelines.

However, there is a threat of further delay in establishing a national Ukrainian Register and certification of sustainability criteria for all biofuels, as required by RED II, due to the full focus on biomethane export and overcoming barriers, which leaves the domestic market without proper solutions. This should be avoided by all means.