

ENERGY REFORMS:

MONITORING REPORT ON UKRAINE'S PROGRESS
IN THE IMPLEMENTATION OF THE ASSOCIATION AGREEMENT
WITH THE EUROPEAN UNION IN AREAS OF ENERGY
AND ENVIRONMENT

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The project “Enhancing impact of civil society in monitoring and policy dialogue on energy and related sectors’ reforms in line with the Association Agreement implementation” aims at strengthening the role of civil society in advocating reforms in the energy and related sectors.

The key objectives of the project are:

- monitoring of the implementation of the energy provisions of the Association Agreement, including relevant environmental and trade-related commitments;
- strengthening the civic experts’ and local actors’ capacity to track actual implementation of the reforms;
- facilitation of public dialog to lead in proper implementation of the European energy and environmental reforms;
- informing stakeholders and the Ukrainian society about the meaning and potential benefits of European reforms in energy and related sectors in order to empower them to keep the government accountable for pursuing these reforms.

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Picture on the cover: <https://informato.rnews/wp-content/uploads/2017/04/104189.jpg>

Executive Summary

In **October**, several events that will further determine the progress in several sub-sectors of energy reforms took place. In particular, the government adopted the updated Action Plan on Implementation of the Association Agreement. The document should replace the similar regulation that existed before. In addition, the Verkhovna Rada and the Cabinet of Ministers adopted personnel decisions that allowed slightly moving forward the reform of the energy regulator, the National Energy and Public Utilities Regulatory Commission. Finally, the heating season, that traditionally will have an impact on the assessment of reforms in the industry, has started in Ukraine.

The gas sector experts point out the lack of government decision on changing the price of gas for households and district heating companies. The conflict between the government and Naftogaz, which is developing in a public domain as well, also continues. In addition, Gazprom reverted to the practice of lowering gas transit pressure, violating contractual obligations.

In **the electricity sector**, against the backdrop of the active work on the required secondary legislation for the proper launch of the new electricity market model, the Task Force experts draw attention to the difficult situation with the accumulation of coal reserves, as well as the shortage of both anthracite and G-grade coal.

Experts in the area of **energy efficiency** continue to emphasize the closed character of the process of drafting regulations to the adopted laws. The situation with regard to incentivizing energy efficiency measures also remains unresolved - the “warm loans” program is not available for use due to the lack of funds once again, and the Energy Efficiency Fund has not yet been established. Against this backdrop, it is necessary to note the announcement by the government of details of the first stage of social care modernization (payment of housing and utilities’ subsidies).

The Task Force **“Environment and Renewable Energy Sources”** note the beginning of the consultation procedure on a number of draft by-laws for the implementation of the Law “On environmental impact assessment”, as well as the presentation of a roadmap for the implementation of the Luxembourg Declaration in Ukraine. In addition, experts describe the dynamics of commissioning renewable energy facilities, as well as the spread of relevant technologies among the population as positive.

Oil and petroleum products’ sector experts support the acceleration of fulfilling part of the commitments, but are still concerned about the delay in implementing directives on reducing sulfur content in some types of liquid fuels, as well as on the quality of petroleum and diesel fuel.

In **the business climate** area, experts have drawn attention to the appointment by the Verkhovna Rada of their representatives to the Competition Committee for the selection of candidates for the NEURC members. In addition, the relevant Task Force noted the legislative initiatives of customs and tax issues, the adoption of the law on electronic trust services, as well as the possibility of purchasing services of energy service companies on ProZorro.

Most Used Abbreviations:

CMU – Cabinet of Ministers of Ukraine
CcSUP – Complex (Consolidated) Safety Upgrade Program of Power Units of Nuclear Power Plants
DHC – district heating company
EIA – environmental impact assessment
EMO – electricity market operator
FEC Committee - Committee on Fuel and Energy Complex, Nuclear Policy and Nuclear Safety
GTS – gas transmission system
KhNPP – Khmelnytskyi NPP
LNG – liquefied natural gas

MECI – Ministry of Energy and Coal Industry
NAK – National Joint Stock Company Naftogaz of Ukraine
NEURC – National Energy and Public Utilities Regulatory Commission
SEA – strategic environmental assessment
SNRIU - State Nuclear Regulatory Inspectorate of Ukraine
TPP – thermal power plant
TSO – transmission system operator
UES – United Energy System of Ukraine
VRU – Verkhovna Rada of Ukraine
WEM - Wholesale Electricity Market

In October, some changes occurred in the area of taking legislative reforms forward: in addition to promoting the launch of the competition commission for rotation of the current composition of the regulator (NEURC), MPs proposed a series of draft laws aimed at stabilizing the work of heat producing companies.

On the background of the heating season start, the Cabinet of Ministers has not made a decision on changing the gas price for households and district heating companies, thus leaving the old price for them, and at the same time lowering the price for heat suppliers to budget institutions within the public service obligations in gas supply by 22%¹.

At the same time, the conflict between the government and Naftogaz regarding the ways of its reforming and, first of all, unbundling, went public in October. Despite this, the government continues to assist Naftogaz in its economic activities, for which the Cabinet of Ministers adopted a number of regulatory legal acts in October.

According to Ukrtransgaz, Gazprom PJSC continues to violate technical obligations regarding compliance with gas pressure standards under the contract for gas transit to the EU. Ukrtransgaz also informed that signifying the full-scale start of the heating season of 2017/18, on October 24 (for the first time since spring), Ukraine's UGSs switched from the mode of net injection to net withdrawal of natural gas.

Directive 2009/73/EC concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (Art. 338, 341 Annex XXVII AA) in accordance with Art. 278 of the AE

In the beginning of the month, the VRU has already passed two resolutions (No. 2158-VIII², No. 2159-VIII³), by which it has approved the candidatures of its representatives to the NEURC rotation committee⁴, accordingly, from the FEC Committee - S.Golikova, from the Committee on Housing and Communal Services - V.Yastrubynskiy. The third member of the competition committee for the selection of candidates for the NEURC members was M.Nitsak, approved by the government decree (No. 742-p of 11.10.2017⁵), on the submission of the Ministry of Energy and Coal Industry. Thus, 2 seats from the President on this commission remained vacant. The need for the appointment of the members of the nomination commission as soon as possible is related to the fact that from November 26, the NEURC with previous members will actually lose the opportunity to make decisions within its powers. However, according to S. Golikova⁶, in case of the most optimistic scenario of staffing the nomination commission, new NEURC members may be approved by the President not earlier than in February 2018.

With the aim of improving the financial conditions of the activity of heat-supplying and heat-generating organizations and enterprises during the heating season 2017/2018, MPs introduced the draft law No. 7083⁷ on settlement of arrears of these enterprises for the gas consumed and services for its transportation, distribution and balancing. The VRU Committee on Housing and Communal Services, at its meeting on October 4, considered and recommended the adoption of this draft law, about which the relevant VRU decree was registered (No. 7083/П⁸).

At the same time, with the same purpose, the VRU registered the draft law No. 7238⁹ aimed at ensuring the sustainable functioning of housing and communal services enterprises during the heating period by introducing guarantees of uninterrupted operation of heat supply entities and prevention of emergencies at them in October. For this purpose, the draft law proposes to exclude the rules empowering a gas

¹ <http://ua.interfax.com.ua/news/economic/457242.html>

² <http://zakon3.rada.gov.ua/laws/show/2158-viii>

³ <http://zakon3.rada.gov.ua/laws/show/2159-viii>

⁴ Under the new Law on the Regulator, candidates for the position of a NEPURC member shall be selected by the Competition Commission, while before, all members were appointed by the President. This Commission is composed of five persons: 2 members – from the VRU, 2 – from the President, 1 – from the CMU.

⁵ <http://www.kmu.gov.ua/control/uk/cardnpd?docid=250360362>

⁶ <http://biz.liga.net/ekonomika/tek/novosti/3712165-rada-naznachila-predstaviteley-v-komissiyu-po-otboru-chlenov-nkreku.htm>

⁷ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=62474

⁸ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=62696

⁹ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=62805

supplier to stop gas supply, in the presence of debts in the settlements for it, from the Law “On the Natural Gas Market” (Article 15) and the Law “On Heat Supply” (Article 19).

Such legislative initiative is caused in particular by the fact that Naftogaz does not fully fulfill its functions as a reliable gas supplier for heat producers. Thus, according to the results of the audit of the NAK’s financial and economic activities by the State Audit Service, its head L.Gavrylova concluded that “the Company systematically ignores the decisions taken by the government and, using its monopoly position and the imperfection of the current legislation, does not provide thermal energy producers with natural gas in the volume of more than 1 bcm”¹⁰, which, in turn, jeopardizes the ability of enterprises to provide consumers with heat.

On the other hand, the debts of DHC enterprises are partly due to a significant amount of unrecovered benefits and subsidies for housing and communal services. However, the government, in the person of the Deputy Prime Minister G.Zubko, charged heads of local self-government authorities with solving the problem of debts of heat-generating enterprises for gas¹¹. Instead, the issue of monetization of subsidies at least at the level of service providers, which could reduce the period of gas payments and partially reduce the debt, was postponed to November.

Another draft law in the field of consumer gas supply, registered by the VRU (No. 7247¹²), concerns the minimum rate of its consumption for the calculation of subsidies. The author of this draft, the MP S.Kaplin proposed to establish a social standard for gas consumption for the calculation of subsidies of not less than 400 cubic meters per month.

At the current session¹³, the draft law No. 6428¹⁴ on improving corporate governance by legal entities, the shareholder or founder of which is a state, submitted by the government in May on the initiative of a government working group to accelerate the Naftogaz reform has to be adopted as a matter of urgency (according to the conclusion of the VRU Committee on Economic Policy). After introducing a number of amendments to clarify the basic principles of management of state-owned entities with a 100% share of the state, the powers of the government in this area and the fulfillment of duties by members of supervisory boards of such entities, members of the committee registered the decision of the VRU on its adoption (No. 6428/П)¹⁵.

In the presence of sufficient gas reserves for the heating season 2017/18¹⁶, the main intrigue of its undergoing was the change in gas prices. Before the beginning of the season (October 15), the government has still not resolved the contradiction between the need to recalculate the price of gas to the population and DHC for the period from 1 October 2017 to 31 March 2018, in accordance with the mechanism agreed with the IMF and the Energy Community (regulated by the CMU Resolution No. 187¹⁷) and the position of heads of the CMU on the unjustified increase in gas prices¹⁸. The official position of the government is that its task is “to carry out an objective calculation of the price of natural gas and to undergo the heating season 2017/18 without additional financial burden on consumers and the budget of the country”¹⁹. Government officials emphasize that the current purchase price of natural gas at the level of UAH 4,942/tcm allows NAK to fully carry out its special responsibilities, does not lead to losses and does not require additional subsidies and compensations from the state budget of Ukraine. According to media

¹⁰ <https://economics.unian.ua/energetics/2207624-sumni-realiiji-derjaudit-oprilyudniv-rezultati-reviziji-naftogazu.html>

¹¹ <https://economics.unian.ua/realestate/2206684-zubko-doruchiv-mistsevomu-samovryaduvannyu-zyasuvati-situatsiyu-z-borgami-za-gaz.html>

¹² http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=62817

¹³ <http://zakon2.rada.gov.ua/laws/show/2149-19/page2>

¹⁴ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=61755

¹⁵ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=62700

¹⁶ http://www.kmu.gov.ua/control/uk/publish/article?art_id=250353062; http://mpe.kmu.gov.ua/minugol/control/uk/publish/article;jsessionid=A23EF7E1110BF93BA0C2D9C7AC75CAA8.app1?art_id=245245807&cat_id=35109;
<https://www.5.ua/ekonomika/koboliev-ukraina-zakachala-hazu-u-skhovyshcha-ponadplanovo-ioho-dostatno-dlia-opaliuvalnoho-sezonu-128946.html>

¹⁷ <http://www.kmu.gov.ua/control/uk/cardnpd?docid=249865173>

¹⁸ http://mpe.kmu.gov.ua/minugol/control/uk/publish/article;jsessionid=0775F0E336FEA4EF1B0D5458F604989D.app1?art_id=245242423&cat_id=35109

¹⁹ Ibid.

Gas

data²⁰, the IMF representatives have rejected the options proposed by the Cabinet of Ministers to change the mechanism for determining this price, and negotiations on this issue go on²¹.

On the other hand, not only the recalculation of gas prices is the subject of criticism of Ukraine's partners with regard to the resolution No. 187²². According to representatives of the Energy Community, the special obligations to supply gas, provided for by the decree, do not meet the conditions of the Third Energy Package of the EU, about which a concern was expressed in the letter to the Government of Ukraine, to which it had to provide an answer by October 22 (claims relate to the concentration of the gas supply market among regional suppliers (by 67 %), caused by the provisions of the regulation of market, lack of competition and the possibility of choosing a supplier by domestic consumers)²³. In the event that a clear answer to this letter is not given, the Council of Ministers may decide to suspend Ukraine's participation in certain processes of the Energy Community or temporarily restrict its rights.

At the same time, a conflict between the government and Naftogaz's management regarding the ways of reforming the company goes on. In fact, the subject of disputes is a fundamentally different vision of both the future of Naftogaz itself and the consequences of its reorganization for the gas market of Ukraine. In the company, as a guarantee of its further successful activities²⁴, they prefer to maintain vertical integration and leave all activities under the aegis of the NAK²⁵, as the NAK persuades, except for TSO. Instead, the government insists on the complete separation of TSOs and storage in separate companies (by the Resolution No. 496²⁶), because the government considers that without this step, it is impossible to carry out a demonopolization of the market and to ensure the competition of suppliers for the population. According to the Vice Premier V.Kistion²⁷, "NAK may stay as a legal entity in the gas market segment and work as a gas distributor on equal terms with other companies"²⁸. In addition to this, the "unbundling" strategy on the Government's conditions is aimed at ensuring favorable conditions for negotiations on the transit of the Russian gas after 2019, the possibility of an agreement on which has been repeatedly exposed to skepticism by the management of Naftogaz.

At the same time, despite the conflict in the area of reform, the government is making the necessary efforts to provide effective support to Naftogaz. During October, the Cabinet of Ministers adopted two decrees and resolution in this area. The decrees concern the approval of amendments to loan agreements aimed at improving the terms of repayment of debt by the NAK under contracts with UkrEximBank JSC and Citibank Europe PLC (respectively, No. 735-p²⁹ and No. 753-p³⁰), which aims to create additional opportunities for

²⁰ <https://ukranews.com/ua/news/521941-kabmin-ne-pidvyshhyv-cinu-na-gaz>

²¹ This was confirmed by the Prime Minister V.Groisman during an hour of government in the Verkhovna Rada (<http://portal.rada.gov.ua/news/Novyny/150549.html>)

²² <http://www.epravda.com.ua/columns/2017/10/24/630407/>

²³ https://issuu.com/eugene977/docs/ecs-2_17o22-08-2017_opening_letter

²⁴ In I half-year of 2017 roky Naftogaz Group of Companies gained net income of UAH 23,3 bln.

(<http://www.naftogaz.com/www/3/nakweb.nsf/0/8377D18E71379EFEC22581AF00324479?OpenDocument&year=2017&month=10&nt=%D0%9D%D0%BE%D0%B2%D0%B8%D0%BD%D0%B8&>), at the same time, the **volume of transit for this period** exceeded the average level by almost 7 bcm **for the last 6 years** (<http://utg.ua/utg/media/news/2017/06/ukraine-increased-daily-gas-transit-to-record-270-mcm.html>), and according to the Head of the State Audit Service L.Gavrilova, "Naftogaz reserves about 70% of the income received from Gazprom for the transit of natural gas" (<https://economics.unian.ua/energetics/2207624-sumni-realiji-derjaudit-oprilyudniv-rezultati-reviziji-naftogazu.html>).

²⁵ More detailed on vision of Naftogaz: http://www.naftogaz.com/files/Information/2017-10-24%20A.Kobolyev_Strategy.pdf

²⁶ <http://www.kmu.gov.ua/control/uk/cardnpd%3Fdocid%3D249240258>

²⁷ <http://www.epravda.com.ua/publications/2017/10/23/630302/>

²⁸ <http://www.kmu.gov.ua/control/uk/cardnpd%3Fdocid%3D249240258>

²⁹ <http://www.epravda.com.ua/publications/2017/10/23/630302/>

³⁰ When being asked if it is not necessary to liquidate Naftogaz at all, in the same interview to "Ekonomichna Pravda", V.Kistion noted that "it is not about liquidation of Naftogaz and all the companies that are part of it. It is only about liquidation of superstructures. What does it produce? Do you know how much money it spends on its maintenance? USD 1.8 billion per year. These are administrative costs only for the superstructure".

²⁹ <http://www.kmu.gov.ua/control/uk/cardnpd?docid=250358457>

³⁰ <http://www.kmu.gov.ua/control/uk/cardnpd?docid=250377266>

Gas

financing gas purchases. This year, Naftogaz significantly increased its purchases to 17.5 bcm (which is 3.1 bcm more than for 9 months of the previous year)³¹. The share of imports in the structure of purchased gas volumes has reached 41%, respectively, the share of Ukrkazvydobuvannia - 59%. The Resolution No. 749³² introducing a mechanism and methods for the compulsory sale of property of state enterprises and business partners with a state interest of at least 25% to repay their debts for the gas consumed is the third government-approved document aimed at ensuring the repayment of debts to Naftogaz and its subsidiaries.

Due to the fact that Naftogaz and Gazprom were not able to reach agreement on the implementation of the Separate Award, adopted in May this year by the Stockholm Arbitration Court, the position of the parties to the dispute should now be considered by the court again. On October 9-11, hearing of this case took place in Stockholm³³. The Chief Commercial Officer of the NAK Y.Vitrenko is satisfied with the results of this interim stage of the court hearing³⁴. According to him, the deadline for making decisions by the Stockholm arbitration both under the gas supply contract and the transit contract is the end of November 2017.

It is known that the independent members of the Supervisory Board of Naftogaz P.Warwick and M.Richards formally completed their work in the company on October 5. The absence of an independent supervisory board at Naftogaz is considered by the EBRD as an obstacle to the further cooperation. In order to overcome this obstacle, the EBRD proposed for its part the list of new independent candidates to the supervisory board, as reported by its president S.Chakrabarti³⁵. The EBRD is currently waiting for a response from the government.

Since November 1, Naftogaz has again increased gas prices for industrial and other consumers³⁶, which are not subject to the Regulation on the Imposition of Special Duties, this time by 7,5%, compared to the prices in October 2017. According to the new price list³⁷, from 1 November 2017, the price of gas as a commodity (including VAT) is set at the following levels: for monthly gas requirements up to 50 tcm inclusive, non-regulated monthly needs and monthly requirements from 50 tcm without prepayment - UAH 9,692.4 per tcm; for monthly needs from 50 tcm, subject to preliminary payment³⁸ - UAH 8,805.6 per tcm (the same price level - UAH 8,805.6 per tcm - is established for the subsidiaries founded by Naftogaz, in which 100 % of the authorized capital is owned by the company).

In October, the regulator adopted a number of regulatory acts in the gas sector. In addition to licensing and approval of the registration procedure for natural monopoly entities (Resolution No. 1268³⁹), the regulator approved the candidatures for officials of DSOs (Resolution No. 1289⁴⁰) responsible for monitoring the implementation of the compliance program.

In addition, on October 8, the minimum standards and requirements for the quality of consumer services and natural gas supply, approved by the Resolution of the NEURC No. 1156 of 21.09.2017, came into force⁴¹. As expected, the new requirements will allow improving the quality of customer service for gas distribution and gas supply companies, better protecting the rights of consumers who receive inadequate

³¹ <http://www.naftogaz.com/www/3/nakweb.nsf/0/0B40792D70962422C22581B70023A8E8?OpenDocument&year=2017&month=10&nt=%D0%9D%D0%BE%D0%B2%D0%B8%D0%BD%D0%B8&>

³² <http://zakon3.rada.gov.ua/laws/show/749-2017-%D0%BF>

³³ <http://www.bbc.com/ukrainian/news-41548858>

³⁴ <https://www.facebook.com/yuriy.vitrenko/posts/10155179816303458>

³⁵ <http://biz.liga.net/ekonomika/tek/novosti/3713202-ebrr-predstavil-novykh-kandidatov-v-nabsovet-naftogaza.htm>

³⁶ <http://www.naftogaz.com/www/3/nakweb.nsf/0/98AC4DDA240B214DC22581BF005856A2?OpenDocument&year=2017&month=10&nt=%D0%9D%D0%BE%D0%B2%D0%B8%D0%BD%D0%B8&>

³⁷ <http://www.naftogaz.com/files/Information/Naftogaz-gas-prices-ne-PSO-November-2017.pdf>

³⁸ Payments during the calendar month preceding the month of gas supply

³⁹ <http://www.nerc.gov.ua/?id=28748>

⁴⁰ <http://www.nerc.gov.ua/?id=28887>

⁴¹ <http://zakon3.rada.gov.ua/laws/show/v1156874-17>

quality services through monetary compensation for violations of standards and requirements.

The NEURC took part in the 12th Gas Community Energy Forum⁴², which took place in Slovenia. It was noted at the Forum that the Ukrainian side was quicker than other parties to reform the natural gas market, and the achievements of the Ukrainian regulator in the approaches to creating and establishing tariff methodologies were also taken into account and the fact that independence of regulators in this process is extremely important was emphasized.

The NEURC has continued the campaign for licensing in the gas sector: during October, the regulator entitled other eight companies to supply gas. As a result, as of 23 October 2017, 335 licensed suppliers of natural gas are registered at the domestic market of Ukraine⁴³.

At the same time, the problem of late publishing by “Uriadovyi Kuryer” of the NEURC regulations, which leads to misrepresentation of the terms of the coming into force of the regulatory acts of the commission, has not been resolved. According to the Head of the NEURC D.Vovk⁴⁴, the newspaper acknowledged in writing the manual regulation of printing and offered to coordinate it with the Secretariat of the Cabinet of Ministers. D.Vovk estimates this as a “gross intervention” in the regulator’s work and intends to inform the Energy Community Secretariat of it.

Regulation (EC) No. 715/2009 on conditions for access to the natural gas transmission networks, replacing Regulation (EC) No. 1775/2005 (Art. 338, 341, Annex XXVII of the AA) according to Art. 278 of the AA, trade issues (Art. 269-274 of the AA)

In October, the escalation of the conflict between the leadership of the government and Naftogaz as to restructuring of the latter took place. Aggravation has become more clear and public. Naftogaz has publicly announced⁴⁵ that it has begun internal reorganization of Ukrtransgaz in order to establish “TSO of Ukraine” branch in its structure. Moreover, in an official press release of the company, it is alleged⁴⁶ that the NAK has received approval from the Energy Community Secretariat for this internal restructuring of Ukrtransgaz.

The Ministry of Energy and Coal Industry identified the measures for the transfer of assets and property to the newly established TSO Mahistralni Gazoprovody Ukrainy (MGU), necessary for implementation of the NAK restructuring plan approved by the Government, and issued a draft resolution⁴⁷ to be adopted for this purpose. In particular, it is proposed to approve the Model Contract on the economic management of the gas transmission system, underground gas storage facilities and other property, to define the Ministry of Energy and Coal Industry as a management body for this state property, as well as a clear procedure for the transfer of assets after the decision of the Stockholm arbitration.

In line with its vision, the government continues to support the new TSO – MGU. Thus, the Cabinet of Ministers has aligned the statutory documents of the TGPU with the requirements of the Law “On Joint Stock Companies”, having established the size of the company’s authorized capital at the level of 1,250 minimum wages (UAH 4,076,000), and also instructed the Ministry of Energy and Coal Industry to ensure the completion of the creation of MGU (Resolution No. 781⁴⁸).

⁴² <https://www.energy-community.org/events/2017/09/GF.html>

⁴³ http://www.nerc.gov.ua/data/filearch/litsenziini_reestry/perelik_gaz.pdf

⁴⁴ https://www.facebook.com/permalink.php?story_fbid=1491464850933984&id=100002114496889&pnref=story

⁴⁵

<http://www.naftogaz.com/www/3/nakweb.nsf/0/2B452B393E6828CAC22581AE00260AD5?OpenDocument&year=2017&month=10&nt=%D0%9D%D0%BE%D0%B2%D0%B8%D0%BD%D0%B8&>

⁴⁶ The same

⁴⁷ http://mpe.kmu.gov.ua/minugol/control/uk/publish/article?art_id=245240755&cat_id=167475

⁴⁸ <http://www.kmu.gov.ua/control/uk/cardnpd?docid=250358344>

In October, it was reported about the results of the work of the government interagency commission to investigate the reasons for the non-fulfillment by the NAK of the “unbundling” plan (including the announced tender for investment banking services, won by Rothschild S.p.A.⁴⁹), headed by the Minister of Energy I.Nasalyk. In addition to taking disciplinary actions against the members of the management board of Naftogaz, at a meeting on October 24, the commission proposed⁵⁰ to transfer to the Cabinet of Ministers as a shareholder of Naftogaz the powers of direct management of Ukrtransgaz, for what the corresponding amendments shall be made in the NAK’s articles of association. According to the media⁵¹, this decision has already been submitted to the Prime Minister of Ukraine for approval.

At the same time, in order to resolve the problem of the correct implementation of allocation by customers of gas transportation services broken down by consumers, the NEURC adopted the Resolutions No. 1290⁵² and No. 1291⁵³. According to the first resolution, gas DSOs are obliged to update and provide Ukrtransgaz with information on consumers’ EIC-codes connected to a respective DSO and EIC-codes of their commercial metering points. Actualization is intended to correct the errors detected in the data of 40% of consumers, previously submitted to the TSO, the presence of which makes it impossible to identify the gas market entities and commercial metering points and makes it difficult to exchange data for balancing. Accordingly, under the second resolution, Ukrtransgaz is obliged to immediately submit for approval of the regulator the corrected forms provided for by clause 1 of chapter 3 of section XII of the TSO Code, under which the TSO shall be provided with the information about the reliable actual volume of consumption of gas by consumers.

According to media reports⁵⁴, the Italian company Snam and the Slovak Eustream are ready to take a lease of a part of the Ukraine’s gas transmission system. Media sources claim that the jointly developed version of gas transit through the GTSs of Ukraine, Slovakia and Austria before the entry into the GTS of Italy is proposed for consideration by the President and the Government of Ukraine. European operators are interested in opinion of the Ukrainian government as the owner of the GTS, and whether the TGPU, to which the Ministry of Energy and Coal Industry intends to transfer the assets of the GTS, or some other operator will be their partner. Opportunities for participation in Ukraine’s gas storage and GTS modernization projects were also discussed during the meeting between the President and the CEO of the French energy group ENGIE I.Kocher⁵⁵.

A key condition for the success of this potential partnership is the trust to the new TSO. In our opinion, the worst consequence of the lack of a unified position of the leadership of the government and the NAK on the implementation of the separation process and the actual new gas transmission system operator may be scaring potential European partners and ultimately missing a chance to involve them in the management of the GTS, without which it would be very problematic to maintain the transit status of Ukraine.

Directive 2004/67/EC concerning measures to safeguard security of gas supply (Art. 338, 341, Annex XXVII of the AA), action of “Early Warning Mechanism” (Annex XXVI of the AA), actions in emergencies (Art. 275-276, 309, 314)

Gazprom continues the practice of non-fulfillment of its obligations under the contract of gas transit to the EU in respect of compliance with gas pressure in the main gas pipelines at the entry point of Sudzha gas

⁴⁹ <http://ua.interfax.com.ua/news/economic/454798.html>

⁵⁰ <https://www.epravda.com.ua/news/2017/10/25/630443/>

⁵¹ The same

⁵² <http://www.nerc.gov.ua/?id=28888>

⁵³ <http://www.nerc.gov.ua/?id=28889>

⁵⁴ https://zn.ua/energy_market/uno-truba-i-mnogo-probl-my-263551.html

⁵⁵ <http://www.president.gov.ua/news/prezident-ukrayini-proviv-zustrich-z-generalnim-direktorom-e-44142>

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metering station on the Russian-Ukrainian border⁵⁶. Thus, according to Ukrtransgaz, on October 26, the pressure was only 55.8 kgf/cm² (at a contractual pressure 60 kgf/cm²). From the beginning of 2017, Gazprom's non-compliance with contractual pressures within the limits of 60-65 kgf/cm² at the entry point of Sudzha gas metering station was fixed during 259 days, that is, 88% of the total time of gas transit.

October 24 signifies the moment of switching of Ukraine's UGS operation mode to net withdrawal of gas due to the need for ensuring heating. According to data of Ukrtrngaz⁵⁷, from March 22, when the smallest gas reserves in the UGS were recorded this year, till October 23, storage facilities have replenished from 8,100.4 mln cubic meters to 16,973.7 mln cubic meters, which is in line with a government-approved plan on the accumulation of 17 bcm of reserves as of 1 November 2017 (as previously reported, Ukraine started the heating season 2016/17 with reserves of 14.7 bcm in mid-October 2016).

⁵⁶ <http://www.naftogaz.com/www/3/nakweb.nsf/0/81B247FC18EA8444C22581C500240D23?OpenDocument&year=2017&month=10&nt=%D0%9D%D0%BE%D0%B2%D0%B8%D0%BD%D0%B8&>

⁵⁷ <http://utg.ua/utg/business-info/live.html>

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The Verkhovna Rada of Ukraine elected two, and the CMU appointed one representative to the Competition Committee for the selection of candidates for the NEURC members. The Commission will be functional with powers with appointment of two more representatives by the President of Ukraine.

Drafts of two market rules, transmission and distribution system codes, and other regulations regarding the activity of producers, transmitters and suppliers of electric energy in the new energy market are published.

The MECI recommends increasing the price level for coal of the G-grade up to 2,425 UAH/ton from 1 November 2017. The CMU adopted the Decree No. 776-p of 18.10.2017 "On Measures to Stabilize the Operation of Power Generating Companies of Thermal Power Plants". At the end of October, there is a large shortage of anthracite and gas coal, the lagging behind the rate of accumulation of coal in storages according to the schedule approved by the MECI is 60%. The power unit No. 7 of the DTEK Prydniprovskia TPP is switched to the use of the G-grade coal and connected to the network. The MECI approved the NNEGC Energoatom Investment Program for 2018 in the amount of UAH 15.952 bn. The Order of the SNRIU No. 313 of 30.08.2017 "On Approval of the Requirements for the Periodic Safety Reassessment of Power Units of Nuclear Power Plants" entered into force. Possibility of operation of the ZNPP unit No. 3 during the over-project term was confirmed by the results of the inspection of the SNRIU.

Directive 2009/72/EC of 13 July 2009 on common rules for the internal market in electricity and repealing Directive 2003/54/EC (Art. 269, Chapter 11, Section IV of the EU-Ukraine Association Agreement)

On October 4, the FEC Committee of the VRU elected 3 candidates for members of the Competition Commission for the selection of candidates for the NEURC members, and on October 6, the VRU passed resolutions on the election of S.Golikova and V.Yasturbinskyi (from the Committee on Housing and Communal Services) as members of the Competition Commission for the Selection of Candidates for the NEURC members⁵⁸. Svitlana Golikova is an independent expert and the director of TransEnergoConsulting private consulting company, and is a member of the Coalition "For Energy Reforms", while Vasyi Yasturbinskyi worked as the Head of the Main Department for Price Policy of the Executive Body of the Kyiv City Council (Kyiv City State administration) from 2003 to 2017. On October 11, the CMU adopted the Decree No. 142-p on the election of Mykola Nitsak, a former chairman of the board of Vinnytsiaoblenergo, the third member of the Competition Commission⁵⁹. This appointment was perceived ambiguously, for example, experts from Reanimation Package of Reforms NGO applied to the CMU with a request to make a public assessment of this candidate as to compliance with the position, since, in their opinion, the appointment took place in a non-transparent manner, and the nominee's family has a corporate interest in the company licensed by the NEURC⁶⁰.

In October, a regular meeting of the Coordination Center for Ensuring the Introduction of a New Electricity Market, at which the Working Groups on the areas were approved, was held. The Minister of the MECI I. Nasalyk is charged with heading the group on formulating issues of the draft law on debt repayment, which was formed in the wholesale energy market⁶¹.

On October 24, the SE NPC Ukrenergo and SE Energorynok published drafts of some main documents of the new energy market - Market Rules⁶², Day-Ahead Market Rules and Intraday Market Rules⁶³.

The market rules are developed and administered by the DSO and approved by the NEURC, and determine the procedure for registration of market participants, the procedure and requirements for

⁵⁸ http://kompek.rada.gov.ua/news/main_news/73252.html

⁵⁹ <http://www.kmu.gov.ua/control/uk/cardnpd?docid=250360362>

⁶⁰ <http://rpr.org.ua/news/hromadskist-zaklykaje-provesty-perevirku-kandydatury-mykoly-nitsaka-pryznachenoho-uryadom-dokonkursnoji-komisiji-z-doboru-kandydativ-na-posady-chleniv-nkrekp/>

⁶¹ <http://kc.er.gov.ua/>

⁶² <https://ua.energy/wp-content/uploads/2017/02/Pravyla-Rynku.pdf>

⁶³ http://www.er.gov.ua/data/DAM_IDM_Rules_DPE_v20_10_17.pdf

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ensuring compliance with obligations under the agreements on the settlement of unbalances of electricity, rules for balancing, functioning of the ancillary services market, the procedure for conducting settlements on the balancing market and the ancillary services market, etc.

The day-ahead market rules and intraday market rules are developed and administered by the EMO, are also approved by the Regulator and determine the procedure for registering “day-ahead” market and intraday market participants, the procedure and requirements for ensuring the fulfillment of obligations under the contracts for the sale of electric energy in these markets, the procedure for organizing and conducting tenders, the procedure for determining the price of electric energy, the procedure for conducting settlements in these markets, determining the value of the services of the market operator and the procedure of payment of it and other things. Both draft rules will be preliminarily discussed with the electricity market participants and, after a generalization of comments, will be forwarded to the NEURC for the official publishing of the regulator’s draft decisions.

On October 25, the CMU approved the Action Plan on Implementation of the EU-Ukraine Association Agreement, an integral part of which is the section devoted to energy. The official text of the Action Plan as of 01.11.2017 has not been published yet, but it may be already said that it provides for the measures for corporatization of the NPC Ukrenergo and the certification of the TSO⁶⁴.

Directive 2009/72/EC of 13 July 2009 on common rules for the internal market in electricity and repealing Directive 2003/54/EC (Article 273, Chapter 11, Section IV, of the EU-Ukraine Association Agreement)

In October, the NEURC continued to publish draft regulatory acts for a new electricity market. Thus, from October 3 to 20, draft resolutions regarding the functions of the market operator, conducting economic activities for the production of electricity, electricity distribution activities, the supply of electricity to the consumer, the exercise of functions of the guaranteed buyer, and the electricity resale (trader activities) were published:

- On approval of the Licensing Conditions for Conducting Economic Activities in Performing the Functions of the Market Operator, which shall be put into effect on 1 July 2019⁶⁵;
- On approval of the Licensing Conditions for Conducting Economic Activities for the Electricity Resale (trader activities), which shall come into force on 1 January 2019 and shall be put into effect on 1 July 2019⁶⁶;
- On approval of the Licensing Terms for Conducting Economic Activities in Electricity Generation, which will be put into effect on 1 July 2019⁶⁷;
- On approval of the Licensing Terms for Conducting Economic Activities in Electricity Supply to the Consumer, which shall be put into effect gradually, starting from 11 June 2018 until 10 June 2020⁶⁸;
- On approval of Licensing conditions for Conducting Economic Activities in Electricity Distribution, which shall be put into effect from 1 December 2018⁶⁹;
- On approval of the Licensing Conditions for Conducting Business Activities in the Exercise of the Functions of a Guaranteed Buyer, which shall be put into effect from 1 July 2019⁷⁰, and it is proposed to amend the Terms and Rules of Entrepreneurial Activities in Wholesale Electricity Supply in the part of purchase/sale of electricity of Ukrenergo in order to provide/receive emergency assistance to transmission systems operators of neighboring states⁷¹.

In addition, 3 draft resolutions concerning the capacity of cross-border networks were published:

⁶⁴ http://www.kmu.gov.ua/control/uk/publish/article?art_id=250372542&cat_id=244274160

⁶⁵ http://www.nerc.gov.ua/data/filearch/Proekty/poekty_oznaky_regulatorynh_aktiv/2017/pr_293/pr_293_03.10.2017.pdf

⁶⁶ http://www.nerc.gov.ua/data/filearch/Proekty/poekty_oznaky_regulatorynh_aktiv/2017/pr_294/pr_294_03.10.2017.pdf

⁶⁷ http://www.nerc.gov.ua/data/filearch/Proekty/poekty_oznaky_regulatorynh_aktiv/2017/pr_295/pr_295_03.10.2017.pdf

⁶⁸ http://www.nerc.gov.ua/data/filearch/Proekty/poekty_oznaky_regulatorynh_aktiv/2017/pr_304/pr_304_12.10.2017.pdf

⁶⁹ http://www.nerc.gov.ua/data/filearch/Proekty/poekty_oznaky_regulatorynh_aktiv/2017/pr_305/pr_305_12.10.2017.pdf

⁷⁰ http://www.nerc.gov.ua/data/filearch/Proekty/poekty_oznaky_regulatorynh_aktiv/2017/pr_302/pr_302_11.10.2017.pdf

⁷¹ http://www.nerc.gov.ua/data/filearch/Proekty/poekty_oznaky_regulatorynh_aktiv/2017/pr_306/pr_306_20.10.2017.pdf

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- Methodology of determining the available throughput capacity of cross-border networks (interstate electric networks of Ukraine)⁷²;
- Rules for controlling restrictions and the procedure of distribution of the throughput of cross-border networks⁷³;
- Model Agreement on access to the throughput of cross-border networks (interstate electric networks of Ukraine)⁷⁴.

Directive, Directive 2009/72/EC of 13 July 2009 on common rules for the internal market in electricity and repealing Directive 2003/54/EC (Article 274, Chapter 11, Section IV of the EU-Ukraine Association Agreement)

Ukrenergo published draft regulatory documents that change the long-term planning system in the UES of Ukraine and meet the requirements of the Law of Ukraine “On the Electricity Market of Ukraine”. This is the “Report on Assessment of the Conformity (Adequacy) of Generating Capacities” and “Plan for Development of the Transmission System for 2018-2027”^{75,76}.

The Annual Report on Assessment of the Conformity (Adequacy) of Generating Capacities is drawn up by the TSO to cover the forecasted demand for electric power and provide the necessary reserve. In doing so, supply safety requirements should be also taken into account. At present, Ukrenergo collects comments and suggestions for public discussion and further adoption.

On October 2, the MECl approved the Forecast Balance of Electric Power of the UES of Ukraine for 2018. The forecast balance is drawn up for the formation of the NEURC tariff policy for 2018 and plans of energy companies. 1.4% of annual growth in electricity consumption, which is 151,000 mln kWh, is forecasted for 2018. Electricity imports are not planned, and its exports may reach 5,880 mln kWh, mainly to the Eastern Europe and Moldova. The increase in the electricity generation from alternative sources by 14% is predicted due to the commissioning of new power plants⁷⁷.

Art. 338, Chapter 1, Section V of the EU-Ukraine Association Agreement. Agreements on cooperation with IFIs

Within the framework of the project “Ukraine: Energoatom - Sustainable Corporate Development” funded by the EBRD technical cooperation funds, the consortium of Deloitte & Touche LLC and IMEPOWER prepared and presented a report on the results of the analysis and evaluation of the most important aspects of the corporatization process of the NNEGC Energoatom, which shall take place in accordance with the guarantee agreement between Ukraine and the EBRD. The report states that effective corporatization requires the development and adoption of a special law that will take into account the specifics of the operation of Energoatom as a nuclear power enterprise⁷⁸.

Art. 339, Chapter 1, Section V of the EU-Ukraine Association Agreement, Carbon Market

In 2018, according to the approved Forecast Balance of Electric Power of the UES of Ukraine, the coal needs for ensuring electric power generation by TPPs and CHPPs are set at 26.6 mln tons: 4.9 mln tons of A-grade coal and 21.7 mln tons of G-grade coal⁷⁹.

⁷² http://www.nerc.gov.ua/data/filearch/Proekty/poekty_oznaky_regulatorynyh_aktiv/2017/proekt_298/pr_298_06.10.2017.pdf

⁷³ http://www.nerc.gov.ua/data/filearch/Proekty/poekty_oznaky_regulatorynyh_aktiv/2017/proekt_297/pr_297_06.10.2017.pdf

⁷⁴ http://www.nerc.gov.ua/data/filearch/Proekty/poekty_oznaky_regulatorynyh_aktiv/2017/pr_296/pr_296_06.10.2017.pdf

⁷⁵ <https://ua.energy/maibutnye-ukrenergo/plan-rozvytku-oes-ukrayiny/>

⁷⁶ <https://ua.energy/maibutnye-ukrenergo/plan-rozvytku-oes-ukrayiny/zvit-z-otsinky-vidpovidnosti-dostatnosti-generuyuchyhpotuzhnostej/>

⁷⁷ <http://195.78.68.67/minugol/doccatalog/document?id=245242050>

⁷⁸ <http://www.energoatom.kiev.ua/ua/press/nngc/53068->

[korporatizatsiya_energoatoma_potrebu_rozrobki_okremogo_spetsalnogo_zakonu_konsultanti_brr_konsortcum_deloittetouche_ta_imepower/](http://www.energoatom.kiev.ua/ua/press/nngc/53068-korporatizatsiya_energoatoma_potrebu_rozrobki_okremogo_spetsalnogo_zakonu_konsultanti_brr_konsortcum_deloittetouche_ta_imepower/)

⁷⁹ http://www.kmu.gov.ua/control/uk/publish/article?art_id=250330745&cat_id=244277212

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On October 4, the CMU approved the Decree No. 715-p “On Redistribution of Certain Expenditures of the State Budget Provided for to the Ministry of Energy and Coal Industry for 2017”, which reduce expenditures for the restructuring of the coal and peat extraction industry by UAH 236,000 thousand, and the support for the construction of the mine No. 10 Novovolynska is reduced by UAH 70,000 thousand. At the same time, expenditures for state support of coalmining enterprises for the partial covering of expenses on the cost of finished commodity coal products are increased by UAH 300,462 thousand and expenses for the physical protection of nuclear facilities and nuclear materials are increased by UAH 5,538 thousand. This document allows ensuring the payment of wages to employees of state coal-mining enterprises and the SE 38 VITCH, and to stabilize the situation in miners’ collectives⁸⁰. Protest campaigns of miners of the mine No. 9 Novovolynska and employees of the Buzhanska mine took place in October because of non-payment of wages for August-September^{81,82}.

In accordance with the Minutes of the meeting on the determination of the maximum price for coal products approved by the MECl on October 26⁸³, the MECl recommends, from 1 November 2017, to increase the price of the G-grade as group coal (with average caloric value of 5,200 Kcal) for state mines from 2,200 UAH/t to 2,425 UAH/t (excluding VAT and transportation costs), taking into account the basic quality indices.

The heating season has only just begun and Ukrainian TPPs and CHPs have a strong shortage of coal of both anthracite and G-grade. Therefore, in order to ensure the stable operation of the UES of Ukraine, on October 18, the CMU adopted the Decree No. 776-p “On measures to stabilize the work of energy generating companies of thermal power plants”⁸⁴, which opens additional credit lines for power generating companies of TPPs for the purchase of the required amount of coal for the successful going through of the heating season 2017/2018. Although the head of the MECl assures that preparations for the heating season are successful, there are the necessary coal reserves, the generating companies have already contracted coal by the end of March 2018, and from November, the coal reserves in the storages have to increase steadily⁸⁵, but official statistics on the accumulation of coal are very disturbing. As of the end of October, the lagging of the accumulation of coal at Ukrainian TPPs from the schedule approved by the MECl is 60%, as reported by the Director of Operations Management - the chief dispatcher of Ukrenergo V.Zaychenko⁸⁶, adding that in order to ensure a comfortable passage of the heating season, daily deliveries to stations should be 100 thousand tons. According to the information on the daily accumulation of coal in the storages of TPPs and CHPPs, provided by the MECl, as of October 31, coal reserves in the storages of TPPs and CHPs were 1,417 mln tons: anthracite coal - 815,2 thousand tons (which is 55,6% of the norm according to the schedule), G-grade coal - 601,9 thousand tons (which is 31,4% of the norm)⁸⁷. Units of the Zmiyivska TPP, operating on anthracite, are stopped through the lack of fuel. G-grade coal reserves at many TPPs are very low, in particular, at the Dobrotvirskaya TPP - for 9 days, Zaporizhzhia TPP - for 8 days, Kurakhivskaya TPP - for 6 days, Burshtynskaya TPP - for 4 days, Ladyzhynskaya TPP - for 4 days.

Through the shortage of the G-grade coal in Ukraine, the DTEK Energy Holding started to purchase G-grade coal from the U.S. for its TPPs, in particular, 150,000 tons of coal should arrive in the near future⁸⁸. On October 12 and 27, batches of steam coal from the U.S. arrived for Tsentrenergo PJSC in the volume of 60,000 tons⁸⁹ and 75,000 tons⁹⁰, respectively. On October 21, two vessels with steam coal from the RSA and the USA arrived in the volume of 155,000 tons for DTEK⁹¹.

⁸⁰ <http://www.kmu.gov.ua/control/uk/cardnpd?docid=250343487>

⁸¹ <http://bug.org.ua/news/novovolynsk/novovolynski-shahtari-prodovzhuyut-aktsiyu-protestu-188697/>

⁸² <http://ua.interfax.com.ua/news/general/455697.html>

⁸³ <http://mpe.kmu.gov.ua/minugol/doccatalog/document?id=245246175>

⁸⁴ <http://zakon2.rada.gov.ua/laws/show/776-2017-%D1%80>

⁸⁵ http://mpe.kmu.gov.ua/minugol/control/uk/publish/article?art_id=245245807&cat_id=35109

⁸⁶ <https://www.rbc.ua/ukr/news/otstavanie-grafiku-nakopleniya-uglya-ukrainskih-1509464788.html>

⁸⁷ http://mpe.kmu.gov.ua/minugol/control/uk/publish/article?art_id=245247522&cat_id=245183254

⁸⁸ <https://economics.unian.ua/energetics/2202239-dpek-ahmetova-pochav-kupuvati-amerikanske-vugillya.html>

⁸⁹ <https://economics.unian.ua/energetics/2184769-druge-sudno-z-amerikanskim-vugillyam-pribulo-do-ukrajini.html>

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Within the framework of the implementation of the program for reducing dependence on anthracite, the DTEK Power Unit No. 7 Prydniprovskaya TPP was switched to the burning of domestic G-grade coal and was connected to the network on October 27. The press service of DTEK also reported that the plant is planning to launch the DTEK Unit No. 8 Prydniprovskaya TPP on G-grade coal in mid-November⁹².

Art. 342, Chapter 1, Section V of the EU-Ukraine Association Agreement, Cooperation in the Nuclear Field, Council Directive No. 2014/87/Euratom, Council Directive No. 2013/59/Euratom, Council Directive No. 2006/117/Euratom

On October 10, the Order of the SNRIU No. 313 of 30.08.2017 “On Approval of the Requirements for the Periodic Safety Reassessment of Power Units of Nuclear Power Plants” entered into force (registered with the Ministry of Justice of Ukraine under No. 1158/31026 of 20.09.2017)⁹³.

In pursuance of Article 20 of the Law “On Technical Regulations and Conformity Assessment”, with the purpose of bringing the “Technical Regulations on Packaging Sets for Storage and Disposal of Radioactive Waste and Plan of Measures for its Application” (approved by the CMU of Ukraine of 18.07.2007 under No. 939⁹⁴) in line with new requirements of the legislation of Ukraine in the area of technical regulation, the SNRIU prepared a new version of the Regulation and the corresponding draft resolution “On Amendments to the Resolution of the Cabinet of Ministers of Ukraine No. 939 of 18 July 2007”⁹⁵. The draft documents are published on the SNRIU website for comments⁹⁶. The draft Law “On Amendments to the Law of Ukraine “On Permitting Activities in the Field of Nuclear Energy Use”⁹⁷, which should optimize and improve the procedures for issuance of permits to carry out activities in the field of nuclear energy use, bringing in line with the Law “On Administrative Services”, was also published on the SNRIU web-site.

According to the Forecast Balance of Electric Power of the UES for 2018, approved on October 2, the generation of electric power at NPPs in 2018 will be 84,000 million kWh⁹⁸. On October 5, the MECI also approved the NNEGC Energoatom Investment Program for 2018 in the amount of UAH 15.952 bn⁹⁹. The issue of safety of Ukraine’s NPPs is a priority, therefore 55% of the funds, namely UAH 8.819 bn, will be directed at the implementation of the CcSUP measures. The head of the CcSUP Project Management Group G.Sazonov said that as of October, 60% of the CcSUP measures had already been implemented, i.e. 644 out of 1082 planned, and implementation of all CcSUP measures should be completed no later than 31 December 2020¹⁰⁰. The Investment Program also provides for the allocation of UAH 1.407 bn for the extension of the lifetime of NPP power units; UAH 3.326 bn new construction; UAH 0.785 bn for technical development, reconstruction, modernization of the main and auxiliary equipment; UAH 0.956 bn to purchase equipment that does not require installation; UAH 0.33 bn for the physical protection of nuclear facilities¹⁰¹.

In October, the National Project IAEA UKR2/001 “Improving the System of Management of Inconsistencies Impacting the NPP Safety”, which was implemented in cooperation with the NNEGC Energoatom and the International Atomic Energy Agency, was completed. For an effective further implementation of IAEA

⁹⁰ <https://economics.unian.ua/energetics/2211151-v-ukrajinu-pribula-nova-partiya-amerikanskogo-vugillya.html>

⁹¹ <https://www.rbc.ua/ukr/news/zasedanie-kontaktnoy-gruppy-donbassu-nachalos-1509104003.html>

⁹² <http://energo.dtek.com/media-center/press/shag-k-energonezavisimosti-dtek-pridneprovskaya-tes-vklyuchila-v-rabotu-perevedenny-na-ukrainskiy-ugol-energoblok-7/>

⁹³ <http://zakon3.rada.gov.ua/laws/show/z1158-17>

⁹⁴ <http://zakon3.rada.gov.ua/laws/show/939-2007-%D0%BF>

⁹⁵ <http://www.snrc.gov.ua/nuclear/uk/publish/article/378438>

⁹⁶ <http://www.snrc.gov.ua/nuclear/uk/publish/article/378392>

⁹⁷ <http://www.snrc.gov.ua/nuclear/uk/publish/article/371241>

⁹⁸ http://www.kmu.gov.ua/control/uk/publish/article?art_id=250330745&cat_id=244277212

⁹⁹ http://www.kmu.gov.ua/control/uk/publish/article?art_id=250325059&cat_id=244276429

¹⁰⁰ <https://economics.unian.ua/energetics/2211176-energoatom-do-kintsya-2020-roku-zavershit-programu-pidvischennya-bezpeki-aes.html>

¹⁰¹ http://www.kmu.gov.ua/control/uk/publish/article?art_id=250325059&cat_id=244276429

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methods and recommendations, the Action Plan, which provides for the creation of a single IT-base for “Management of Inconsistencies”, was developed at the NNEGC Energoatom¹⁰².

Based on the results of the comprehensive inspection of the SNRIU regarding the readiness of the ZNPP Unit No. 3 to extend the service life¹⁰³, the commission of the SNRIU confirmed the possibility of the unit’s operation in excess of the project deadline¹⁰⁴. It is planned that the final decision will be made by the SNRIU board in November 2017¹⁰⁵. The SNRIU also published the Report on Public Discussion of the Possibility of Extending the Operation of the Zaporizhzhya NPP Unit No. 2¹⁰⁶.

On October 18-28, the IAEA inspection, which took place without any findings and confirmed the compliance of the RNPP with the International Guarantees, was held within the framework of the International Agreement on the Application of Safeguards in accordance with the “Procedure for the Application of Safeguards for the Non-Proliferation of Nuclear Weapons” at the Rivne NPP¹⁰⁷. On October 23-27, a joint partner inspection of WANO, which verified the implementation of corrective measures developed on the basis of the results of the partner inspection in 2015, was conducted at the KhNPP. The inspection showed that a significant part of the work was performed and significant improvements were noted, but it is necessary to continue working to improve the performance¹⁰⁸.

On October 25, the Memorandum of Understanding, which provides for the cooperation in increasing power, efficiency and safety of NPPs by upgrading turbine island equipment, was signed between the NNEGC Energoatom and Japanese Toshiba Energy Systems & Solutions Corporation¹⁰⁹.

On 30 October, the SNRIU published¹¹⁰ the Sixth National Report of Ukraine on the implementation of obligations under the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management (NDU-2017) approved by the SNRIU Board¹¹¹.

Art. 342, Chapter 1, Section V of the EU-Ukraine Association Agreement, Cooperation in the field of nuclear power, Cooperation are aimed at solving the problems caused by the Chernobyl accident and decommissioning of the Chernobyl Nuclear Power Plant

On October 11, the CMU approved the draft Agreement on the Amendments No. 14 to the Grant Agreement (Chornobyl NPP Nuclear Safety Project) between the EBRD, which is the manager of the grants provided by the Nuclear Safety Account, and the CMU and the State Specialized Enterprise Chornobyl NPP as the Beneficiary¹¹². This document provides an opportunity to complete all internal procedures necessary for signing the Agreement and will facilitate additional financing from the Nuclear Safety Account, which will be directed exclusively to the completion of the construction of the spent nuclear fuel storage (SNFS-2) on the territory of the industrial site of the SSE Chornobyl NPP.

¹⁰² http://www.energoatom.kiev.ua/ua/press/nngc/53083-energoatom_za_dopomogyu_magate_udoskonalyu_sistemu_upravlnnya_nevdpovdnostyami/

¹⁰³ <http://www.snrc.gov.ua/nuclear/uk/publish/article/376303>

¹⁰⁴ http://www.energoatom.kiev.ua/ua/press/nngc/53063-nspektcya_derjatomregulyuvannya_pdtverdila_mojlivst_roboti_energobloku_zaes_u_ponadproektnivi_termn/

¹⁰⁵ <http://www.snrc.gov.ua/nuclear/uk/publish/article/376285>

¹⁰⁶ <http://www.snrc.gov.ua/nuclear/uk/publish/article/336137>

¹⁰⁷ http://www.energoatom.kiev.ua/ua/press/nngc/53124-chergov_a_nspektcya_magate_pdtverdila_dotrimannya_raes_mjnarodnih_garantyi/

¹⁰⁸ http://www.energoatom.kiev.ua/ua/press/nngc/53121-na_hmelnitskyi_aes_zaversheno_povtornu_partnersku_perevrku_vao_aes/

¹⁰⁹ http://www.energoatom.kiev.ua/ua/press/nngc/53108-energoatom_toshiba_pdpisali_memorandum_pro_vzamorozumnyya_ta_rozvitok_sprvobtnitctva_z_modernzats_ukraskih_aes/

¹¹⁰ <http://www.snrc.gov.ua/nuclear/uk/publish/article/378349>

¹¹¹ <http://www.snrc.gov.ua/nuclear/doccatalog/document?id=378337>

¹¹² <http://www.kmu.gov.ua/control/uk/cardnpd?docid=250345654>

Electricity and Nuclear Safety

On October 17-20, the SNRIU inspectors conducted an inspection of the SSE Chernobyl NPP plant as to the status and safety of the execution of works within the framework of the ChNPP decommissioning and the transformation of the Shelter facility into an environmentally safe system. The inspection showed that: “The SSE ChNPP must pay special attention to the necessary radiation safety measures while organizing work in the NSC under-arc space and in the “free access zone”, equipped outside the NSC, and provide increased radiation control in the areas of work; the SSE ChNPP requires storage facilities for radioactive contaminated materials and radioactive waste, additionally equipped in accordance with the safety requirements, as well as facilities for their decontamination and exemption from regulatory control (this is at the stage of development of corresponding technical decisions)”; there is a delay in the schedule defined by the program “Final Closing and Preservation (FCaP) of the SSE ChNPP units”¹¹³.

¹¹³ <http://www.snrc.gov.ua/nuclear/uk/publish/article/378143>

Energy Efficiency and Social Issues

In the area of implementation of legislation on energy efficiency, October was marked as the month when loud statements were made and some work on the preparation of important decisions to be adopted next month was performed. E.g., the publication of details on implementation of the first phase of social aid modernization in paying for communal services was announced, draft laws that can complete the creation of the legal framework for the deployment of large-scale energy efficiency measures are being prepared for consideration by the parliament, and additional funds can be allocated for covering the gaps in funding subsidies. In addition, the Ministry of Regional Development managed to publish for public comment three draft regulations to implement the laws adopted earlier, although in general, the regulatory work of the key body is quite closed and non-public.

Directive 2012/27/EC on energy efficiency

According to the regulation on developing legislative initiatives, comments and proposals were accepted to the draft law “On Energy Efficiency”¹¹⁴, the main developer of which is the State Agency on Energy Efficiency and Energy Saving, published in October on the official web-site of the Ministry of Regional Development, within a month from the date of its publication. According to the State Agency of Energy Efficiency and Energy Saving, they are currently being developed by interested authorities, citizens and institutions within the term established for public discussion. In accordance with the Regulation, after developing the proposals and comments, the draft law must be approved at the meeting of the relevant government committee and the government itself, after which it will be submitted to the Verkhovna Rada for consideration. Taking into account the work schedule of the government and parliament, it is quite realistic to expect registration of the draft law in the Verkhovna Rada by the end of this year.

In early November, the draft law on housing and communal services No. 1581-д, the adoption of which will regulate legal relations of co-owners of multi-apartment buildings, including their associations, with managing agents and entities with related property on their balance, will be submitted to the parliament for the repeated second reading, and thus will complete the adoption of the “energy efficiency” package¹¹⁵.

Energy audits and energy management systems (Article 8)

The Government’s decree on approving a plan of measures for introducing a system of energy management in budgetary institutions is finally officially published in Uriadovyi Kurier as of October 21¹¹⁶, as well as on the official website of the Verkhovna Rada¹¹⁷. The main difference between the published act and the draft is an additional measure in the Plan, namely, the introduction of the system of energy management in budgetary institutions, under which local self-government authorities (by consent) and the State Agency on Energy Efficiency have been described as responsible bodies.

At the same time, in accordance with the Cabinet of Ministers’ Regulation, the adopted decrees shall enter into force on the date of adoption, and the delay in publishing in no way shall affect their effect. Thus, the responsible executive bodies, first of all, the State Agency on Energy Efficiency and Energy Saving, the Ministry of Regional Development and the Ministry of Economic Development had to comply with its provisions for more than six months. However, the results of this activity are still unknown.

Accounting (Article 9)

In the Ministry of Regional Development, a working group on preparing subordinate regulatory legal acts aimed at implementing the law “On Commercial Accounting of Thermal Energy and Water Supply” was created. However, no draft of the relevant methodologies out of seven, the Ministry of Regional Development has been determined as the developer of which, has not been published for public discussion

¹¹⁴ <http://www.minregion.gov.ua/wp-content/uploads/2017/09/Proekt-Zakonu-Ukrayini1.pdf>

¹¹⁵ <http://iportal.rada.gov.ua/meeting/awt/show/6638.html>

¹¹⁶ <http://zakon3.rada.gov.ua/laws/card/732-2017-%D1%80>

¹¹⁷ <http://zakon3.rada.gov.ua/laws/show/732-2017-%D1%80>

Energy Efficiency and Social Issues

as of today. At the same time, on October 31, on the Ministry's website, the draft resolution of the Cabinet of Ministers No. 409 of 6 August 2014 was published for such procedure. This technical document brings the procedure for calculating benefits and subsidies in line with changes in the payment for the installation and maintenance of metering units under the law on commercial metering¹¹⁸.

Draft acts of the NEURC, which should be developed for the implementation of the Law, were published for public discussion on the regulator's web-site on 5 September 2017. In accordance with the requirements of the procedure for conducting an open discussion of the NEURC draft decisions, the discussion of the draft resolution of the NEURC "On Amendments to the Procedure for the Formation of Tariffs for Services for Centralized Supply of Cold Water, Drainage (Using In-House Systems)" was held on 25 October 2017. The minutes state that participants of the meeting agreed that the draft resolution does not need to be finalized and may be approved in the version proposed by the Commission¹¹⁹.

Dissemination of information on energy efficiency improvements among consumers and other stakeholders (Articles 12, 17)

The popularization of the main tasks of the state policy in the area of energy saving and energy efficiency is constantly carried out by representatives of the State Agency on Energy Efficiency and aimed at implementation of energy saving measures in the housing stock and budget buildings. During October 2017, the State Agency on Energy Efficiency, together with the GIZ project "Energy Efficiency Reform of Ukraine" and the Representative Office of F. Ebert Fund in Ukraine presented the advantages of introducing energy management in budget facilities in the Lugansk Regional Military-Civilian Administration¹²⁰, Ivano-Frankivsk¹²¹, Uzhgorod¹²² and Lutsk¹²³.

Energy Service Market (Article 18)

Today, the national information base of potential ESCO-entities, which is formed by the State Agency of Energy Efficiency and Energy Saving, has more than 11 thousand entities, the monthly dynamics is noticeably increasing. In addition, the list of energy service companies, which are at the stages of implementation of service contracts in budgetary institutions of Ukraine, was published. At present, 19 ESCO agreements have already been concluded, 15 of which - in Kyiv¹²⁴. As the head of the Agency noted, about 80,000 budgetary institutions in Ukraine should be thermo-modernized, which requires the attraction of a significant amount of investment in the amount of EUR 8 bn¹²⁵.

The ProZorro public procurement system, which, starting from this month, offers the opportunity to procure services under ESCO contracts for budget institutions through open bidding procedures will be one of the effective ways to ease the attraction of such funds¹²⁶. The State Agency of Energy Efficiency, together with the Ministry of Economic Development and Trade, the SE PROZORRO and experts have introduced a special module for ESCO-procurements, which, according to the First Deputy Minister of Economic Development and Trade, will enable the auction, which is the most complicated in the system in technical terms. The fact is that, unlike the standard methodology of the ProZorro system, in which the cost of services is valued firstly, a key criterion of the tender for receiving an ESCO contract is the present value - the index of effectiveness of implementation of projects, in other words, the actual energy savings ratio. As of 20 October 2017, more than 20 open energy service tenders have been announced, and by the end of the year, over 100 tenders will be announced¹²⁷.

¹¹⁸ <http://www.minregion.gov.ua/wp-content/uploads/2017/11/Zmini.pdf>

¹¹⁹ http://www.nerc.gov.ua/data/filearch/Proekty/poekty_oznaky_regulatornyh_aktiv/2017/pr_288/protokol_vidkr-obgovorennia_pr-288.pdf

¹²⁰ <http://sae.gov.ua/uk/news/2027>

¹²¹ <http://sae.gov.ua/uk/news/2016>

¹²² <http://sae.gov.ua/uk/news/2008>

¹²³ <http://sae.gov.ua/uk/news/2000>

¹²⁴ http://sae.gov.ua/uk/content/energoserwis_1

¹²⁵ <http://sae.gov.ua/uk/news/2022>

¹²⁶ http://www.kmu.gov.ua/control/publish/article?art_id=250365294

¹²⁷ <http://sae.gov.ua/uk/news/2019>

Energy Efficiency and Social Issues

National Energy Efficiency Fund, financing and technical assistance (Article 20)

Contrary to the previously received assurances of the representatives of the Ministry of Regional Development in the prompt submission of draft subordinate regulatory legal acts aimed at implementing the Law “On the Energy Efficiency Fund”, for public discussion, as of the end of October, no such act was published on the ministry’s website.

The OPORA Civic Network has appealed to the Ministry of Regional Development with an official request for access to public information with a request to officially provide a list of draft regulatory legal acts that need to be developed for the implementation of the Law, indicating the current stage of development for each. In response, the ministry indicated that such information is official and is not subject to publication on the website of the Ministry of Regional Development. Taking into account the fact that the information about the list of draft regulatory legal acts and the stage of their development in accordance with the Law “On Information” is not and can not be official, and the answer of the Ministry of Regional Development is likely to be considered as concealing information, OPORA applied to the Ministry Justice of Ukraine with an official request to provide an explanation as to the situation.

At the same time, the relevant Vice Prime Minister G. Zubko confirmed once again the plans of the Ministry of Regional Development to complete the work on rulemaking by the end of 2017 in order to launch the Energy Efficiency Fund next year¹²⁸.

The situation with financing of the “warm loans” program still remains tense. Some banks have not issued loans to applicants for a few weeks through a shortage of funds, and additional financing of the program by the end of 2017 is possible no more than in the amount of UAH 100 mln¹²⁹. Moreover, even if such an additional resource is provided, funds will be available only to applicants - individuals, while multi-apartment buildings co-owners associations and housing construction cooperatives, which also show an impressive demand dynamics, will remain without the opportunity to receive support for energy efficiency measures.

Directive 2010/31/EC on the energy performance of buildings

Work on the development of the legal framework for the implementation of the adopted framework law is ongoing, although the process suffers from a traditional lack - a lack of transparency. According to Vice Prime Minister G.Zubko, the priority of his government agency in improving the energy efficiency of buildings in Ukraine is, in particular, the development of the market of energy auditors¹³⁰. Thus, on the official website of the Ministry of Regional Development the draft CMU resolution “On approval of the procedure for the exchange of information between central executive authorities, attestation commissions in the process of independent monitoring, professional certification and maintenance of database of certificates, specialists and reports” was published in early October. This procedure is one of the mandatory regulations provided by the law No. 2118, and establishes the responsible executors and the mechanism and requirements for the organization of such an information exchange¹³¹.

In addition, on October 20, the Ministry of Regional Development also submitted the draft CMU resolution “On the establishment of a list of buildings for industrial and agricultural purposes, energy, transport,

¹²⁸ http://www.kmu.gov.ua/control/uk/publish/article?art_id=250333110&cat_id=244276429

¹²⁹ <https://zhytlo.in.ua/ua/novini/energozberezhennya1/opora-zaklikae-uryad-rozpodiliti-dodatkovy-koshti-na-tepli-krediti-dlya-osbb.html>

¹³⁰ http://www.kmu.gov.ua/control/uk/publish/article?art_id=250333465&cat_id=244276429

¹³¹ <http://www.minregion.gov.ua/base-law/grom-convers/informatsiyi-povidomlennya-pro-provedennya-publichnogo-gromadskogo-obgovorennya-grom-convers/rozpochato-gromadske-obgovorennya-proektu-postanovi-kabinetu-ministriv-ukrayini-pro-zatverdzhennya-poryadku-obminu-informatsiyevu-mizh-tsentrallyimi-organami-vikonavchovi-vladi-atestatsiyimi-komisi/>

Energy Efficiency and Social Issues

communication and defense facilities, warehouses, which are not subject to the minimum requirements for energy efficiency of buildings and which are not subject to certification of energy efficiency of buildings” for public debate¹³². According to the annex to the project, it is proposed to add 50 different types of buildings to this list¹³³.

Social issues

The reimbursement of benefits and subsidies for housing and communal services takes place with long delays, which leads to accumulation of debts of service providers, as well as significant complications in the management of multi-apartment buildings, especially for those co-owners who have created a multi-apartment building co-owners association. In order to eliminate this delay, the Verkhovna Rada may already send additional funds in October, which, according to the draft amendments to the State Budget for 2017, should amount to approximately UAH 7.5 bn¹³⁴. The draft government resolution, developed by the Ministry of Finance, which should introduce the first stage of monetization of social assistance, is called for reforming this extremely inefficient system in the long run¹³⁵. According to preliminary reports, the Cabinet of Ministers plans to introduce a new system from 1 January 2018.

¹³² <http://www.minregion.gov.ua/base-law/grom-convers/informatsiyi-povidomlennya-pro-provedennya-publichnogo-gromadskogo-obgovorennya-grom-convers/rozpochato-gromadske-obgovorennya-proektu-postanovi-kabinetu-ministriv-ukrayini-pro-vstanovlennya-pereliku-budivel-promislovogo-ta-silskogospodarskogo-priznachennya-ob-yektiv-energetiki-transpor/>

¹³³ <http://www.minregion.gov.ua/wp-content/uploads/2017/10/Dodatok.pdf>

¹³⁴ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=62830

¹³⁵ <https://www.slovoidilo.ua/2017/09/30/novyna/polityka/minfini-rozpovily-pro-monetyzaciyu-subsydij-tke>

Environment and Renewable Energy Sources

In October 2017, the Cabinet of Ministers adopted the document defining the agenda and calendar plan for implementation of the Association Agreement, including in the field of environment, the updated action plan on implementation of the Agreement. The plan canceled all previous planning documents, including plans for implementation of each directive and regulation. We hope that the updated measures will effectively replace the previous documents and will have a positive impact on the progress of the environment.

In the area of implementation of horizontal environmental legislation, the promulgation of the first three regulatory legal acts required to start implementation of the Law on Environmental Impact Assessment was the biggest achievement in October. Currently, the projects are being publicly discussed, and there is a series of documents that need to be developed and approved next in turn. The Ministry of Natural Resources also presented a roadmap for implementation of the Luxembourg Declaration in Ukraine, which will unambiguously contribute to the implementation of proper environmental governance in Ukraine, in particular in the context of EIA, SEA, access to environmental information, public participation.

Regarding renewable energy, several important “green” facilities were put into operation. At the same time, RES are becoming more popular among the population. So far, all this is happening at the expense of the feed-in tariff, but authorities and international institutions are looking for new incentives for more active industry development.

Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (codification) (Article 363 of the Association Agreement)

The Ministry of Environment of Ukraine published draft regulatory legal acts developed pursuant to the Law “On Environmental Impact Assessment” No. 2059-VIII of 23.05.17¹³⁶ for public discussion (public hearings took place on October 12)¹³⁷.

The following draft resolutions were submitted for public discussion:

1. Draft Resolution of the Cabinet of Ministers “On Approval of the Procedure for the Transfer of Documents for Providing an Opinion on the Environmental Impact Assessment and the Maintenance of the Unified Register on Environmental Impact Assessment”;
2. Draft Resolution of the Cabinet of Ministers “On Approval of the Criteria for Determining the Planned Activities, its Extension and Change that are not Subject to Environmental Impact Assessment”;
3. Draft Resolution of the Cabinet of Ministers “On Approval of the Procedure for Conducting Public Hearings in the Process of Environmental Impact Assessment”.

The projects are currently “raw” and, in our opinion, have been made public in such a way in order to provide a formal opportunity for their public discussion prior to the Government’s adoption (which should take place by 18 December 2017, in accordance with the Law of Ukraine “On Environmental Impact Assessment”). At present, the proposed draft resolutions are inconsistent with each other, do not comply with the provisions of the law itself. Conceptually, the proposed draft resolutions reproduce the model of state environmental expertise. In particular, the proposed form of financing the environmental impact assessment is reduced to “payment for the environmental impact assessment”, the amount of which is proposed to be approved by the Ministry of Environment in agreement with the Ministry of Finance. It will be reminded that public authorities do not carry out an environmental impact assessment in accordance with the new law; this is an obvious rudiment of the post-Soviet state environmental expertise.

¹³⁶ <http://zakon3.rada.gov.ua/laws/show/2059-19>

¹³⁷ <https://menr.gov.ua/news/31757.html>

Environment and Renewable Energy Sources

On 18 October 2017, during the round table “Objectives and tasks of proper environmental governance in the context of the implementation of the Luxembourg Declaration”, the Ministry of Environment and Natural Resources presented the Roadmap on the implementation of the provisions of the Luxembourg Declaration¹³⁸. The document, among other things, includes the main current priorities of the Ministry of Environment and Natural Resources (objective and main task) for the reform of the environmental sector. Namely: the formation of a horizontal vision of the environmental policy in the state through the adoption of an updated framework state environmental strategy; ensuring the integration of environmental policies into sectoral policies (and regional/local development policies) through the introduction of the EIA institution, the adoption of the SEA law, the proper functioning of procedures; the transition to circular economy models through the adoption of a national European waste management strategy; integrating climate change policies into sectoral and local policies through the preparation and adoption of Low Carbon Development Strategies and (Sectoral Plans) for Adapting to Climate Change; the reform of the ecological monitoring, supervision and control system; the reform of the water resources management system: separation of political, economic and supervisory functions; management under the basin principle; information provision of the “Open Environment” decision-making system.

Directive 2008/50/EC on ambient air quality and cleaner air for Europe (Article 363 of the Association Agreement)

The Minister of Ecology and Natural Resources O. Semerak believes that it is easier for pollutants to pay environmental taxes today than to spend on environmental modernization of outdated production. In his opinion, the “polluter pays” principle provided for in the Association Agreement between Ukraine and the EU does not work in Ukraine. He insists on the introduction of a mechanism that would encourage enterprises to move to the principles of sustainable development and does not exclude that an increase in the environmental tax may be such a mechanism¹³⁹.

Directive 2009/29/EC on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (Article 338 of the Association Agreement)

On October 5, the Law “On Accession of Ukraine to the Statute of the International Renewable Energy Agency (IRENA)”¹⁴⁰ developed by the State Agency of Energy Efficiency and Energy Saving was submitted for MPs’ consideration.

Accession of Ukraine to IRENA will allow:

- receiving assistance to the organization in improving the legislative framework, attracting investment and building capacity in renewable energy;
- providing additional guarantees to potential foreign investors for investing in “green” projects in Ukraine;
- working closely with developed countries in this area;
- receiving an access to IRENA databases on the latest technologies and developments, best practices in the world and, most importantly, effective mechanisms for financing “clean” energy projects.

This month, the report on “Ukraine’s Transition to Renewable Energy by 2050”¹⁴¹, on which, for 1.5 years, the Institute for Economics and Forecasting of the National Academy of Sciences has been working with the

¹³⁸ <https://menr.gov.ua/news/31791.html>

¹³⁹ <https://menr.gov.ua/news/31784.html>

¹⁴⁰ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=62668

Environment and Renewable Energy Sources

support of Heinrich Böll Fund in Ukraine in cooperation with civil society organizations, state authorities, relevant associations and independent experts, was also published. The report looks at how Ukraine can move to almost full RES use and what consequences it will have for the energy and economic sectors. At the same time, the share of wind farms can reach 45%, solar plants - 36%, and biomass and waste in the structure of heat energy production - up to 73%. This transition is possible in the context of setting the appropriate target policy, stimulating the implementation of energy efficiency and energy savings measures, implementing environmental restrictions on the emission of thermal power plants and refusing to construct new nuclear power units.

It should be noted that during October, the capacity of “green” energy in Ukraine increased, namely: on October 26, in the Lviv region, the third stage of the Saryi Sambir-2 wind power plant and the first stage of the solar power plant in the village of Ternovytsia were opened. The total capacity of the WPP is 20.7 MW, and the solar power plant is 5.9 MW. Windkraft Tavria LLC also built 2-5 stages of the Novotroyitska WPP, the total capacity of which is currently 43.8 MW, in the Kherson region at the end of October.

Meanwhile, the second stage of the Tuzlivska WPP of Prychornomorskyi Wind Park LLC was commissioned in the Mykolaiv region. This new wind power plant of the park with a capacity of 3.2 MW is currently the most powerful in Ukraine and manufactured at the Fuhrlaender Windtechnology plant in Kramatorsk.

At the same time, RES are becoming more popular among the population. As of mid-October, 2323 Ukrainian households installed domestic solar systems with a total capacity of 37 MW and attracted almost EUR 35 mln of investment for this. And this is by 2128 more than in the same period of 2016. Those who installed domestic solar systems with a capacity of up to 30 kW in 2017 may sell clean energy at the rate of 18.09 eurocents/kWh till 2030. Local authorities also assist in transitioning to “solar” electricity. In particular, in the Lviv region, 22% per annum under the solar panels loan are returned to a household from the regional budget, and in Zhytomyr region - 20% of the loan amount. This trend is a “green light” for investors, as it opens up a huge market of solar panels, since there are 6.5 mln individual households in Ukraine.

In general, in October, “green” facilities produced 1,388.7 mln kWh¹⁴² of electricity, 42% of which was produced by wind power plants, 39% by solar plants, 10% by small hydroelectric plants and 9% by facilities working on biomass.

Consequently, renewable energy continues to grow and multiply its capacity, to a certain extent due to the “green” tariff. At the same time, Ukrenergo, the EBRD and other stakeholders are considering new approaches to stimulating energy production from RES. The mechanism of auctions is one of them. According to the head of Ukrenergo V.Kovalchuk, such auctions should concern only large projects (with the capacity from 10-15 MW)¹⁴³.

¹⁴¹ <https://ua.boell.org/uk/2017/10/24/perehid-ukrayini-na-vidnovlyuvanu-energetiku-do-2050-r>

¹⁴² <https://www.slideshare.net/UkrAssociationofRES/c-2017-80926512>

¹⁴³ <http://ua-energy.org/uk/posts/skazaty-vidnovliuvanii-enerhetytsi-tak-iaki-pidkhody-do-stymulivannia-vyrobnytstva-enerhii-z-vde-rozhliadaie-ukraina>

Oil

In the reporting period, the schedule of implementation of Ukraine's international obligations, including in the oil sector, was substantially updated. In particular, on 25 October 2017, the Government approved the Action Plan for implementing the Association Agreement¹⁴⁴, as well as the procedure for monitoring and controlling its implementation, which provides for the quarterly consideration of the course of the AA implementation, identifying priorities and expediency of updating tasks in connection with making decisions by bodies of the Association at the meetings of the Government Committees¹⁴⁵. The implementation of Ukraine's international obligations in terms of increasing transparency and simplification of prospection, exploration and production of hydrocarbons (Directive 94/22/EC) is accelerated. A number of national standards aimed at ensuring the proper control of emissions from oil storage facilities (Directive 94/63/EC) have been approved. Despite these achievements, the government's delay in the implementation of Directive 99/32/EC on the reduction of sulfur content in certain liquid fuels and Directive 98/70/EC relating to the quality of petrol and diesel fuels is of concern.

Directive 2009/119/EC imposing an obligation on Member States to maintain minimum stocks of crude oil and/or petroleum products (Art. 338 of the AA)

According to the updated plan¹⁴⁶ of the State Agency of Reserve for the implementation of Directive 2009/119/EC, which was prepared to replace the current one¹⁴⁷, the Cabinet of Ministers postponed the terms:

- the selection of a model of minimum oil and oil products' reserves - from December 2015 to December 2017 (responsible - the Ministry of Energy and Coal Industry and the State Statistics Service);
- preparation of the draft law "On Minimum Oil and Oil Products' Reserves" - from December 2016 to December 2017 (responsible - the State Agency of Reserve, the Ministry of Economic Development and Trade, and the Ministry of Finance);
- implementation of all planned organizational measures - for the period after the entry into force of the law "On Minimum Oil and Oil Products' Reserves"¹⁴⁸.

The first developing by the European and Ukrainian experts of the EU technical support project "Assistance to Ukraine in the process of implementing energy sector reforms in accordance with the international obligations of the country"¹⁴⁹ concerning the implementation of Directive 2009/119/EC will be presented on 8 November 2017 at the meeting of the Working Group on formation of strategic reserves of oil and oil products, formed under the State Agency of Reserve.

At the same time, it remains unclear why, by its decree¹⁵⁰, the Cabinet of Ministers:

- transferred the powers to develop the draft law "On Minimum Oil and Oil Products' Reserves" from the Ministry of Energy and Coal Industry to the State Agency of Reserve, although according to the Regulation¹⁵¹, the said power only implements the state policy in the area of the state material reserve and establishing it as responsible for the formation of the policy is in violation of Clause 2 of Article 1 of the Law "On central Executive Authorities"¹⁵²;
- instructed the Antimonopoly Committee and the non-existent "Association of Oil and Gas Industry Enterprises" to create legislative conditions for the formation of a strategic oil and oil products reserve";

¹⁴⁴ Nevertheless, as of 5 November 2017, the text of this and some of the other documents approved by the Government on October 25 are not available in open databases.

¹⁴⁵ http://www.kmu.gov.ua/control/uk/publish/article?art_id=250372246&cat_id=244276429

¹⁴⁶ http://civic.kmu.gov.ua/consult_mvc_kmu/uploads/attach-3346-490347147.pdf

¹⁴⁷ <http://zakon0.rada.gov.ua/laws/show/346-2015-%D1%80>

¹⁴⁸ <http://zakon3.rada.gov.ua/laws/show/503-2017-%D1%80>

¹⁴⁹ <http://rezerv.gov.ua/u-derzhrezervi-tryvae-roboty-po-implementacii-dyrektyvy2009119ec/>

¹⁵⁰ <http://zakon3.rada.gov.ua/laws/show/503-2017-%D1%80>

¹⁵¹ <http://zakon2.rada.gov.ua/laws/show/517-2014-n>

¹⁵² <http://zakon5.rada.gov.ua/laws/show/3166-17>

- at the same time, used the terms “strategic reserve”, “minimum reserves” and “proper level of reserves” regarding oil reserves in the clause 5.2 of the action plan for the implementation of Section V of the Association Agreement.

Directive 99/32/EC on the reduction in the sulfur content of certain liquid fuels and amending Directive 93/12/EC, as amended by Regulation (EC) 1882/2003 and Directive 2005/33/EC

Pursuant to requirements of Directive 99/32/EC concerning the determination of the authorized body, on 11 February 2016, the Ministry of Energy and Coal Industry issued the draft Government resolution “On Amendments to the Decrees of the Cabinet of Ministers of Ukraine No. 573 of 1 June 2011 and No. 927 of 1 August 2013”¹⁵³. This draft provided for the attribution of automobile petrol, diesel and ship fuel and furnace boiler oil to the responsibility of the State Service for Food Safety and Consumer Protection as a body of state market supervision.

Although the draft resolution was rejected by the decision of the State Regulatory Service No. 604 of 29 December 2016, due to non-compliance with the key principles of the state regulatory policy¹⁵⁴, its revision is not carried out, as the document is withdrawn from control. Nevertheless, the project is considered as “developed in 2017” (p. 2¹⁵⁵) in a presentation of the Ministry of Energy and Coal Industry, which was made public during the Ukrainian Petroleum Market 2017 conference.

Directive 98/70/EC relating to the quality of petrol and diesel fuels and amending Directive 93/12/EEC, as amended by Directives 2000/71/EC, 2003/17/EC and 2009/30/EC and Regulation (EC) 1882/2003 (Annex XXX, Articles 360-363, 365, 366 of the AA)

According to the Implementation Plan for Directive 98/70/EC (Articles 7 and 8; clause 1.3), the Ministry of Energy and Coal Industry was obliged from December 2015 to report on the functioning of the system for monitoring the quality and safety of oil products in Ukraine¹⁵⁶. However, as of 5 November 2017, no document was distributed. Only the draft resolution of the Cabinet of Ministers “On Amendments to the Decrees of the Cabinet of Ministers of Ukraine No. 573 of 1 June 2011 and No. 927 of 1 August 2013” was published¹⁵⁷. The document stipulates that conformity assessment bodies are required to submit reports on activities related to assessment of conformity of fuels to the requirements of the Technical Regulation to the Ministry of Energy and Coal Industry twice a year. Although the mentioned draft was rejected by the decision of the State Regulatory Service No. 604 of 29 December 2016, which was developed without compliance with the principles of state regulatory policy¹⁵⁸, its revision is not carried out, since the document is withdrawn from control. Nevertheless, “the introduction of an effective mechanism for independent quality control of automobile petrol by amending the Technical Regulation” and “introduction of mechanisms for monitoring processes in the market and conducting their analysis” are available among “further measures of the Ministry of Energy and Coal Industry” in the presentation made public on 15 September 2017 (p. 3¹⁵⁹).

The National Standardization Work Program for 2017¹⁶⁰, as amended on 24 July and 28 September 2017, provides for the adoption, by the end of 2017, of 32 standards aimed at the implementation of Directive 98/70/EC. As of 5 November 2017, eight of them were approved, three are at the editing stage, 18 are returned for revision, three are at the initial stage of development¹⁶¹. In general, only 18 of the 36 national standards for motor fuels and test methods required to ensure the application of the Technical Regulation on Requirements to Motor Petroleum, Diesel and Marine Fuels and Boiler Oil¹⁶² have been approved.

¹⁵³ http://mpe.kmu.gov.ua/minugol/control/uk/publish/article?art_id=245160232&cat_id=167475

¹⁵⁴ <http://www.drs.gov.ua/wp-content/uploads/2016/11/7994-29-12-2016.pdf>

¹⁵⁵ <http://195.78.68.67/minugol/doccatalog/document?id=245235813>

¹⁵⁶ http://www.kmu.gov.ua/document/248091869/Dir_98_70.pdf

¹⁵⁷ http://mpe.kmu.gov.ua/minugol/control/uk/publish/article?art_id=245160232&cat_id=167475

¹⁵⁸ <http://www.drs.gov.ua/wp-content/uploads/2016/11/7994-29-12-2016.pdf>

¹⁵⁹ <http://195.78.68.67/minugol/doccatalog/document?id=245235813>

¹⁶⁰ http://uas.org.ua/wp-content/uploads/2017/04/Program_2017_nakaz_N64_2017-04-03.xlsx

¹⁶¹ http://uas.org.ua/wp-content/uploads/2017/10/Zvit_vikon-gruden_Program-2017Dod.1Dod.2Zmina1na-sait.xlsx

¹⁶² <http://zakon.rada.gov.ua/go/927-2013-n>

The Ministry of Energy and Coal Industry is obliged to develop, by 1 January 2018, the Technical Requirements for Aviation Petrol and Jet Fuel complying with the requirements of Directive 98/70/EC (clause 32 of the Plan for the Development of Technical Regulations for 2017¹⁶³). However, the implementation of this and the above-mentioned tasks in full is unlikely due to a lack of funding.

Directive 94/63/EC on the control of volatile organic compound emissions resulting from the storage of petrol and its distribution from terminals to service stations, as amended by Regulation (EC) 1882/2003 (Annex XXX, Art. 360-363, 365, 366 of the AA):

In November 2016, the deadline for the implementation of the tasks provided for in clauses 1.1.1, 1.1.2 and 1.2.1 of the implementation plan for Directive 94/63/EC¹⁶⁴ expired. Nevertheless, as of 5 November 2017, the Cabinet of Ministers did not adopt the resolution “On Approval of the Technical Regulation on Requirements to Storage, Transportation and Overload of Fuel, Related Equipment and Service Stations”, and the Ministry of Environment and Natural Resources did not approve recommendations for controlling the work of petrol stations and did not conduct the inventory of tank farms.

In order to comply with the requirements of Directive 94/63/EC concerning the reduction of oil product losses during the discharge/filling of automobile tanks and the refueling of vehicles:

- Appendix 2 to the National Standardization Work Program for 2017 provides for the development of the national standard “Methodology of Verification. Tankers Calibrated for Oil Products” (TC 63¹⁶⁵) by the end of 2017;
- the national standards DSTU EN 13012 “Petrol stations. Design and performance of automatic fueling pistols used in petrol station pumps”, DSTU EN 13617-2 “Petrol stations. Part 2. Requirements to the safety of the design and performance of cutoff clutches used in dosing pumps and dispensers”, DSTU EN 13617-3 “Petrol stations. Part 3. Requirements to the safety of the design and performance of shut-off valves”, DSTU EN 13617-2 “Petrol stations. Part 4. Requirements to the safety and design of rotary couplings used in dosing pumps and dispensers” (TK 146) are adopted by the method of “confirmation”;
- the first edition of the national standard DSTU EN 13617-1 “Petrol stations. Part 1. Safety requirements to the design and performance of dosing pumps, fuel-handling devices and remote pump units” (TK 93¹⁶⁶) was developed.

At the same time, the Ministry of Energy and Coal Industry recognizes its task for the near future “to develop a regulatory legal act regarding the rules of natural losses of oil products during their acceptance, storage, issue and transportation” (p. 3¹⁶⁷).

Directive 94/22/EC on the conditions for granting and using authorizations for the prospection, exploration and production of hydrocarbons (Annex XXVII, Art. 279, 280, 341 of the AA)

After 7 August 2017, when the Minister of Environment and Natural Resources O. Semerak noted that “the State Service of Geology and Mineral Resources needs serious reform”, which should not be limited to changing its leadership¹⁶⁸, the work of this body on the implementation of Directive 94/22/EC has become much more active.

On 3 October 2017, the Working Group on reforming relations in the field of subsoil use reviewed the first package of draft regulatory legal acts developed by the State Service of Geology and Mineral Resources¹⁶⁹.

¹⁶³ <http://www.me.gov.ua/Documents/Download?id=d8571d0b-53a6-4ade-88c1-75579be0cb39>

¹⁶⁴ http://www.kmu.gov.ua/document/248091862/Dir_94_63.pdf

¹⁶⁵ http://uas.org.ua/wp-content/uploads/2017/09/Dodatok-2_Program-2017_nakaz_304_28.09.2017.xlsx

¹⁶⁶ <http://uas.org.ua/ua/news/povidomlennya-pro-rozroblennya-pershiih-redaktsiy-proektiv-natsionalnih-standartiv-15/>

¹⁶⁷ <http://195.78.68.67/minugol/doccatalog/document?id=245235813>

¹⁶⁸ https://www.facebook.com/os.semerak?hc_ref=ARRoOvtDCEbK6jt57sckggmvVU-6qn6YB9de9fzv3NM-X5Z9qi_3eKOaLPtQYTCmUc&fref=uf&pnref=story

¹⁶⁹ <http://www.geo.gov.ua/novyna/rozglyanuto-pershyy-paket-zakonodavchyyh-zmin-shchodo-reformuvannya-galuzi>

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In particular, in order to accelerate the approval by the local self-government authorities of the provision of subsurface areas for use both through sale at auction and without it, the State Service of Geology and Mineral Resources submitted draft amendments to Articles 26, 43 and 46 of the Law of Ukraine “On Local Self-Government in Ukraine”¹⁷⁰. This document¹⁷¹ offers:

- to attribute deciding the issues of the approval of the use of mineral resources that contain minerals of local importance to the exclusive competence of the village (settlement, city) council at its plenary meetings;
- to add the approval of providing mineral resources containing minerals of national importance for use to the list of issues that shall be decided at plenary meetings of regional councils; use of minerals of local importance - at plenary sessions of district councils;
- to convene a session of councils on the approval of providing mineral resources for use at least once a month.

On 3 October 2017, the draft law “On Amendments to the Law of Ukraine “On Local Self-Government in Ukraine” (regarding the approval of the provision of mineral resources for use) was added to the Action Plan of the Ministry of Environment and Natural Resources for Drafting Regulatory Projects for 2017 (deadline – the fourth quarter of 2017)¹⁷².

In order to eliminate inconsistencies in the Procedure for Granting Special Permits for the Use of Subsoil and the Procedure for Conducting Auctions for the Sale of Special Permits for the Use of Subsoil, based on the practice of their application, the State Service of Geology and Mineral Resources has developed a new package of amendments to the Decrees of the Cabinet of Ministers No. 594 and 615 of 30 May 2011. This document¹⁷³ supplementing the draft resolution¹⁷⁴ and to be submitted to the Cabinet in the fourth quarter of 2017¹⁷⁵, in particular, suggests:

- to exclude the program of works on subsoil plots from a package of auction documentation submitted together with an application for the issue of a permit for the use of the subsoil plot for auction;
- to submit an application together with the documents necessary for obtaining special permits for the use of subsoil in an electronic form as well;
- to exclude a provision prohibiting granting a permit without an auction to a person who does not perform a program of work on subsoil plots, for which he/she has already been granted a permit, or as to whom violations of the rules for the use of subsoil were detected at such sites as recorded in reports of inspections, instructions or orders of the relevant authorities in the field of subsoil use until they are eliminated;
- to remove the rules on mandatory sealing of applications and other documents submitted by business entities for the provision of special permits for the subsoil use.

However, it is surprising that, while addressing to the State Regulatory Service on 12 October 2017, the State Service of Geology and Mineral Resources asks to develop and agree the said project “in one-day terms”, referring to the extract from the Minutes No. 35 of the Cabinet of Ministers five months ago¹⁷⁶.

On 3 October 2017, the draft resolutions of the Cabinet of Ministers of Ukraine (deadline – the fourth quarter of 2017) were added to the Action Plan of the Ministry of Environment and Natural Resources for the Preparation of Draft Regulatory Acts for 2017¹⁷⁷:

¹⁷⁰ <http://www.geo.gov.ua/novyna/dlya-pryskorennya-roboty-oblrad-derzhgeonadra-rozroblyly-proekt-zmin-do-zakonu-ukrayiny>

¹⁷¹ http://www.geo.gov.ua/sites/default/files/imce/proekt_zakonu.doc

¹⁷² https://menr.gov.ua/files/docs/nakazy/nakaz_365.pdf

¹⁷³ http://www.geo.gov.ua/sites/default/files/imce/proekt_postanovy_3.doc

¹⁷⁴ http://www.geo.gov.ua/sites/default/files/imce/proekt_postanovy_0.doc

¹⁷⁵ https://menr.gov.ua/files/docs/nakazy/nakaz_378.pdf

¹⁷⁶ http://www.drs.gov.ua/wp-content/uploads/2017/10/11483_12_10_17.pdf

¹⁷⁷ https://menr.gov.ua/files/docs/nakazy/nakaz_365.pdf

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- “On Amendments to the Classification of Mineral Reserves and Resources of the State Subsoil Fund” aimed at ensuring the possibility for subsoil users to apply the provisions of the 2009 United Nations Framework Classification for Fossil Energy and Mineral Reserves and Resources (UNFC 2009). The Classification¹⁷⁸ is proposed to be supplemented by paragraph 28, which provides for the use of international standards UNFC 2009, CRIRSCO, PRMS, etc.¹⁷⁹ for the needs of a subsoil user upon his application;
- “On Amendments to the Methodology for Determining the Value of Mineral Reserves and Resources of the Field or Subsoil Plot Provided for the Use” aimed at bringing clauses 4 and 6 of the Methodology¹⁸⁰ in line with UNFC 2009 (Objective I, Task 203¹⁸¹). The document proposes¹⁸²: to determine the value of mineral reserves and resources, based on the forecast price of the final (and not the first) commodity products obtained from the main, co-occurring and accompanying minerals and components or products of their processing, which are to be sold; to enter in particular amortization deductions into the formula for calculating the cost of operating costs; to change the period for accruing a discounted step according to the established practice and procedure.

In order to bring the outdated Instruction on the content, design and procedure for submission of materials for the geological and economic assessment of oil and gas deposits¹⁸³ in line with the requirements of the current legislation, a draft of the corresponding order of the Ministry of Environment and Natural Resources of Ukraine has been developed¹⁸⁴.

The updated Instruction defines:

- the composition and content of materials from detailed geological and economic assessment (GEO-1) of explored fields (deposits) of hydrocarbons and the procedure for their submission for examination and evaluation of the State Commission on Mineral Resources in accordance with Art. 45 of the Code of Ukraine on mineral resources;
- requirements to the materials of the previous (GEO-2) and the initial (GEO-3) geological and economic assessments of exploration work facilities for oil and gas, which are submitted for examination and testing of the State Commission on Mineral Resources by the decision of subsoil users, as well as recommendations for composition of materials from prospection and exploration of hydrocarbon deposits, submitted to the State Commission on Mineral Resources for the provision of methodological assistance to the performers of works.

In order to simplify economic activity in the field of subsoil use, the State Service of Geology and Mineral Resources proposed a new procedure for holding auctions for the sale of special permits for the use of subsoil “by electronic tenders”¹⁸⁵. According to the Acting Head of the State Service of Geology and Mineral Resources O. Kyryliuk, introduction of the system of electronic auctions will provide “a fundamentally new level of quality of service of potential subsoil users”. It is noted that “the electronic trading system will work in real time for an unlimited number of people. In addition, the collection, visualization and storage of the information about subjects of tender will be carried out, the authorization of the tenderers, as well as the provision, comparison and acceptance of their price proposals will be carried out”¹⁸⁶.

At the time of implementation of this project, the State Agency of Geology and Mineral Resources proposed to temporarily suspend the operation of the resolution of the Cabinet of Ministers of Ukraine of

¹⁷⁸ <http://zakon2.rada.gov.ua/laws/show/432-97-%D0%BF>

¹⁷⁹ http://www.geo.gov.ua/sites/default/files/imce/proekt_pkmu_pro_zminy_do_pkmu_no432_okk.doc

¹⁸⁰ <http://zakon3.rada.gov.ua/laws/show/1117-2004-%D0%BF>

¹⁸¹ <http://www.kmu.gov.ua/document/249935381/R0275.doc>

¹⁸² http://www.geo.gov.ua/sites/default/files/imce/zmpostkmu1117_2017_ok.doc

¹⁸³ http://www.geo.gov.ua/sites/default/files/imce/instrukciya_dgs_1_2.doc

¹⁸⁴ <http://www.geo.gov.ua/novyna/vsi-aukciony-derzhgeonadr-provodytytymutsya-v-rezhymi-onlayn>

¹⁸⁵ Ibid.

¹⁸⁶ Ibid.

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30 May 2011, No. 594 “On Approval of the Procedure for Conducting Auctions for the Sale of Special Permits for the Use of Subsoil”.

The approach proposed by the State Service of Geology and Mineral Resources was supported by the Ministry of Environment and Natural Resources¹⁸⁷, which added the draft Cabinet resolution “On the implementation of the pilot project on the implementation of the procedure for holding auctions for the sale of special permits for subsoil use by electronic tenders” to the Action Plan for the Preparation of Draft Regulatory Acts for 2017 (deadline – the fourth quarter of 2017)¹⁸⁸.

According to the promise of the Acting Head of the State Service of Geology and Mineral Resources to sell 158 “sleeping licenses”, revealed by the results of the inspection of the State Fiscal Service in 2015-2017¹⁸⁹, on 17 October 2017, the State Service of Geology and Mineral Resources stopped the first 19 special permits, the owners of which did not file in full packages of documents on the implementation of agreements on the subsoil use terms¹⁹⁰.

However, in spite of these achievements, there are no lots that would relate to hydrocarbons exploitation among the plots put up for the auction scheduled on December 21¹⁹¹.

In addition, the information provided in the speech of the Minister of Ecology and Natural Resources during the meeting of the Working Group on Reforms of Relations in the Field of Subsoil Use, which took place on 17 September 2017¹⁹², differs from the information published on the web-site of the State Service of Geology and Mineral Resources. In particular, in the draft resolution of the Government¹⁹³ developed by this service, there is no clause that “the issuance (handing over) of the permit shall be carried out within 15 working days after the payment in full of the fee for granting a special permit”, as the head of the Ministry of Environment and Natural Resources asserts.

In accordance with the Implementation Plan for Directive 94/22/EC, a new edition of the Subsoil Code of Ukraine was to be adopted by the end of 2016¹⁹⁴. It is known that amendments are being developed by the working group under the Ministry of Environment and Natural Resources¹⁹⁵. However, according to the Cabinet of Ministers, as of 20 October 2017, the draft of the updated Subsoil Code of Ukraine “is being developed by the authorities concerned”¹⁹⁶, since its submission to the Verkhovna Rada was postponed to the fourth quarter of 2017 (Objective I, task 202¹⁹⁷).

The state of preparation of the draft resolution of the Government on amending the Methodology for Determining the Initial Sale Price at the Auction of a Special Permit for the Subsoil Use¹⁹⁸ (Objective I, task 204¹⁹⁹), which should introduce a differentiated approach to the evaluation, depending on the intended purpose of the work (exploration or extraction), the degree of reliability of geological materials (resources or reserves) and the type of deposits depending on the complexity of extraction (traditional or non-traditional methods, is unknown.

¹⁸⁷ <http://www.geo.gov.ua/novyna/minpryrody-budut-spryyaty-derzhgeonadram-u-reformuvanni-galuzi>

¹⁸⁸ https://menr.gov.ua/files/docs/nakazy/nakaz_365.pdf

¹⁸⁹ <http://www.geo.gov.ua/novyna/minpryrody-budut-spryyaty-derzhgeonadram-u-reformuvanni-galuzi>

¹⁹⁰ <http://www.geo.gov.ua/novyna/derzhgeonadra-zupynly-diyu-19-specdozvoliv>

¹⁹¹ <http://www.geo.gov.ua/novyna/derzhgeonadra-gotuyetsya-do-drugogo-aukcionu-2017-roku>

¹⁹² <http://www.geo.gov.ua/novyna/minpryrody-budut-spryyaty-derzhgeonadram-u-reformuvanni-galuzi>

¹⁹³ http://www.geo.gov.ua/sites/default/files/imce/proekt_postanovy_0.doc

¹⁹⁴ http://www.kmu.gov.ua/document/248102926/Dir_94_22.pdf

¹⁹⁵ <https://menr.gov.ua/content/sklad-robochoi-grupi.html>

¹⁹⁶ <http://www.drs.gov.ua/deregulation/plan-deregulyatsiyi-2016-2017-rr/>

¹⁹⁷ <http://www.kmu.gov.ua/document/249935381/R0275.doc>

¹⁹⁸ <http://zakon0.rada.gov.ua/laws/show/1374-2004-%D0%BF>

¹⁹⁹ <http://www.kmu.gov.ua/document/249935381/R0275.doc>

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On 11 October 2017, the clause 65, which concerned the introduction of a simplified procedure for the use of a plot of land during geological exploration and was to be implemented in the first quarter of 2017 by developing by the Ministry of Agrarian Policy and submission by the government of the draft law “On Amending the Land Code” and the Law “On State Registration of Proprietary Rights to Real Estate and their Encumbrances” for the consideration of the Verkhovna Rada, was removed²⁰⁰ from the Action Plan for Deregulation of Economic Activities²⁰¹. It can be assumed that the preparation of the relevant changes, as well as the draft act of the Cabinet of Ministers on amendments to the Regulation on the Procedure for the Provision of Mining Allotments²⁰² in relation to the abolition of the mining allotment for the oil and gas industry (deadline - the first quarter of 2017²⁰³) is considered by the Government as such that does not require additional attention, since the resolution of these issues is envisaged by the draft law “On amendments to some legislative acts of Ukraine on simplification of some aspects of the oil and gas industry” (registration number 3096-Д)²⁰⁴.

At the same time, in October 2017 (without administrative pressure on the part of the Cabinet of Ministers), the issue of the continuation of special permits for the use of the subsoil to the two largest mining companies of Ukraine was partially regulated.

As stated on the official web-site of the State Service of Geology and Mineral Resources²⁰⁵, on 26 September 2017, it extended the term of nine permits (to the Korzhivske, Koziyivske, Zavodivske, Pivdenno-Panasivske, Anastasivske, Lypovodolynske, Artiukhivske, Kachalivske, Rybalske fields) to Ukrnafta for 20 years. The issue took place in compliance with the decisions of the District Administrative Court of Kyiv and the resolutions of the Kyiv Administrative Court of Appeal, taking into account the decisions on the initiating of enforcement proceedings²⁰⁶.

On 18 October 2017, according to the results of negotiations between the State Service of Geology and Mineral Resources and Ukgazvydobuvannya, the company was granted nine special permits: 4 for new fields (Rozumivsko-Mazharivska, Merchenkivska, Tarkhanivska, Maksymets-Bystrytska), 2 - for extending the validity of already issued permits (Butsivska square, Stepove field), 2 - on introducing changes (Kulychykhynske and Kosivske field), 1 - for hydrocarbon production (Dobrianske deposit)²⁰⁷.

Despite the first steps in the right direction, at its meeting on 5 October 2017, the Verkhovna Rada’s Committee on Environmental Policy, Environmental Management and the Elimination of the Consequences of the Chernobyl Catastrophe, expressed concern about “the unsatisfactory state of affairs with the increase of the mineral resources base of the state and, in particular, on issuing special permits for the subsoil use”, recommending the State Service of Geology and Mineral Resources to accelerate the development and adoption of relevant regulatory legal acts²⁰⁸.

Article 280 of the Association Agreement regarding the provision of transparency in the granting of licenses for the exploration or exploration or extraction of hydrocarbons

The Ministry of Environment continues to delay with the introduction of amendments to the Regulation on the Procedure of Disposal of Geological Information²⁰⁹ (Objective I, Task 206²¹⁰), which should, in particular, introduce the simplified digital access to real-time secondary geological information (deadline - the first

²⁰⁰ <http://zakon3.rada.gov.ua/laws/show/724-2017-%D1%80>

²⁰¹ <http://zakon3.rada.gov.ua/laws/show/615-2016-%D1%80/paran13#n13>

²⁰² <http://zakon2.rada.gov.ua/laws/show/59-95-%D0%BF>

²⁰³ <http://zakon2.rada.gov.ua/laws/show/1079-2016-%D1%80/paran146#n146>

²⁰⁴ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=61900

²⁰⁵ The corresponding orders of the State Service of Geology and Mineral Resources are absent on the website.

²⁰⁶ <https://www.ukrnafta.com/derzhavna-sluzhba-geologii-ta-nadr-prodovzhue-protipravno-ne-vikonuvati-rishennya-sudu>

²⁰⁷ <http://www.geo.gov.ua/novyna/derzhagonadra-diyshly-porozuminnya-z-ukrgazvydobuvannyam>

²⁰⁸ <http://iportal.rada.gov.ua/news/Novyny/149875.html>

²⁰⁹ <http://zakon0.rada.gov.ua/laws/show/423-95-%D0%BF>

²¹⁰ <http://www.kmu.gov.ua/document/249935381/R0275.doc>

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quarter of 2017²¹¹). In particular, the technical conditions for the placement of geological information on electronic resources have not yet been developed and working groups have not been formed to process the existing information.

On the website of the State Service of Geology and Mineral Resources, only a draft of the relevant government resolution²¹² has been made public. According to this draft resolution:

- for the introduction of free access to the geological information, Geoinform of Ukraine SSPE should ensure the creation, introduction and continuous operation of the integrated geographic information system, web portal, database of secondary (interpreted) geological information and the State Register of Geological Information (metadata bases);
- the State Service of Geology and Mineral Resources, after the expiration of five years from the date of receipt from the sub-user, shall publish the following geological information for each deposit on the official website: geological maps, structural, presumptive, survey and consolidated maps of geological content with explanatory notes; passports of wells, deposits and manifestations of minerals; reference cards for subsoils exploration with copies of the contours of the location of the studied areas (works profiles) to them; contour maps, cartograms and tables of subsoil exploration, situational plans; generalized geological and geological and economic reviews, technical and economic reports;
- the rules for the circulation of information shall regulate the agreements between the custodian and the State Service of Geology and Mineral Resources. Primary geological information shall be transferred to state storages in accordance with the provisions approved by the State Service of Geology and Mineral Resources. The obligation to transfer geological information to state storages shall be specified in the special conditions of a special permit;
- the owner of geological information shall have the right to restrict its use, including for commercial purposes, for no more than for three years from the moment of its transfer to Geoinform of Ukraine SSPE;
- the fee for the geological information shall be collected by the sub-users upon the receipt of a special permit for subsoil use as a partial compensation for the state's expenditures for previously conducted geological exploration;
- financing the work related to creation and ensuring the functioning of the information system and databases, providing free access of users to the geological information, shall be carried out at the expense of funds accumulated on the special registration account of the State Treasury for the use of the geological information and its sales;
- in spite of the appearance of this draft, on 14 October 2017, the Minister of Environment and Natural Resources O. Semerak noted that “we have decided not to amend the outdated Regulation on Geological Information, but to create a qualitatively new document instead”²¹³. However, despite this statement, as of 5 November 2017, this draft regulation was not published.

²¹¹ <http://zakon2.rada.gov.ua/laws/show/1079-2016-%D1%80/paran146#n146>

²¹² http://www.geo.gov.ua/sites/default/files/imce/postanova_423.doc

²¹³ <https://menr.gov.ua/news/31745.html>

Business Climate

MPs supported the appointment of two members of the Competition Committee for the selection of candidates for the NEURC members: V.Yastrubynskiy and S.Golikova from the Committee on Housing and Communal Services and FEC Committee, respectively. This happened after the parliament tried twice unsuccessfully to appoint its representatives during the last session. The Cabinet of Ministers appointed its representative M.Nitsak. However, according to the public, its candidacy was selected in a non-transparent method. Consequently, 3 out of 5 members of the Competition Commission have been delegated, representatives of the President of Ukraine are not appointed.

A number of legislative measures were taken to harmonize the Ukraine's customs and tax legislation and to strengthen economic relations between the EU and Ukraine. Five draft laws on this subject were registered with the Verkhovna Rada of Ukraine. The Cabinet of Ministers was the initiator of the submission of these draft laws. At the same time, two draft laws on optimization and simplification of customs control procedures were registered with the Parliament.

Due the functional upgrade of the ProZorro system, government agencies will be able to procure energy services companies (ESCOs) services, which can save up to 2% of the total Ukrainian annual gas consumption and will contribute to the opening of a new market of about EUR 8 bn. The draft law on electronic trust services, which will facilitate the acceleration of business processes and, as a consequence, reduction of operating expenses for doing business will be adopted and submitted to the President for signature.

In order to overcome the inflationary processes, the Board of the National Bank raised the discount rate to 13.5% per annum (from October 27). The draft law No. 7155, which provides for a legislative limitation of the NBU's requirements for mandatory sale of foreign currency receipts and settlements for export-import transactions, was also registered. In addition, the Government approved the draft law on the introduction of the tax on withdrawn capital, which, instead of the corporate income tax, is expected to be a stimulus for businesses to reinvest money into production and development in Ukraine.

Article 277 as regards regulatory authority (provisions of Directives 2009/72/EC and 2009/73/EC as regards regulatory authority)

3 out of 5 members of the Competition Committee for the selection of candidates for the NEURC members have been appointed. On October 5, MPs supported the candidates proposed by the FEC Committee²¹⁴ and Committee on Housing and Communal Services²¹⁵. These were Svitlana Golikova and Vasyl Yastrubynskiy, respectively.

On October 11, the government delegated its representative, proposed by the Ministry of Energy and Coal Industry²¹⁶ - Mykola Nitsak. However, the decision on this particular member of the Competition Commission was criticized by the public²¹⁷. According to the appeal from the coalition of public organizations of the Reanimation Package of Reforms, Mykola Nitsak candidacy was not elected transparently. In addition, his past and his wife's activities question the observance of Article 8 of the Law "On the NEURC": impeccable business reputation, high professional and moral qualities, public authority. Therefore, the government is required to give a public assessment of Mykola Nitsak's candidacy as to adequacy for the position he was delegated to, and in the event of violations being identified, to appoint another candidate.

The NEURC approved the procedure for compiling and maintaining the register of natural monopoly entities, defined by the Resolution No. 1268 of 19.10.2017²¹⁸, however, it has not yet entered into force,

²¹⁴ <http://zakon2.rada.gov.ua/laws/show/2158-19>

²¹⁵ <http://zakon2.rada.gov.ua/laws/show/2159-19>

²¹⁶ <http://zakon2.rada.gov.ua/laws/show/742-2017-%D1%80>

²¹⁷ <http://rpr.org.ua/news/hromadskist-zaklykaje-provesty-perevirku-kandydatury-mykoly-nitsaka-pryznachenoho-uryadom-dokonkursnoji-komisiji-z-doboru-kandydativ-na-posady-chleniv-nkrekp/>

²¹⁸ <http://zakon2.rada.gov.ua/laws/show/v1268874-17>

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since it is not published in the Uriadovyi Kurier newspaper. What is provided for by the NPA is described in more details in the Business Climate section of the September monitoring report ²¹⁹.

Articles 27-49 as regards access of products to the market

The deepening of trade relations between Ukraine and the European Union implies a gradual approximation of the Ukrainian customs and tax legislation with the European norms. Accordingly, on October 3, at the initiative of the Cabinet of Ministers, five draft laws related to this topic were registered with the Verkhovna Rada:

- On amendments to the Tax Code of Ukraine regarding the peculiarities of taxation of transactions for importing goods into the customs territory of Ukraine by authorized economic operators (No. 4776)²²⁰;
- On amendments to the Customs Code of Ukraine regarding the authorized economic operator and simplifications of customs formalities (No. 4777)²²¹;
- On amendments to the Customs Code of Ukraine regarding the protection of intellectual property rights during the movement of goods across the customs border of Ukraine (No. 4614)²²²;
- On Amendments to the Customs Code of Ukraine on the implementation of the EU-Ukraine Association Agreement (No. 4615)²²³;
- On amendments to the Customs Code of Ukraine regarding the bringing of transit procedures in accordance with the Convention on the Unified Transit Regime and the Convention on Facilitation of Formalities in Trade in Goods (No. 5627)²²⁴.

In the context of the improvement of the “single window” mechanism, two draft laws on simplification of control procedures (No. 7010-1)²²⁵ and optimization of control procedures (No. 7010)²²⁶ during clearance were also registered with the VRU.

Articles 148-156 as regards public procurement (provisions of Directive 2014/25/EC)

The functional system of the ProZorro system is expanded with the possibility of conducting open tenders for the purchase of services of the energy service. Thus, state structures will be able to procure the services of energy service companies (ESCO)²²⁷. According to the estimates of the Head of the State Agency on Energy Efficiency and Energy Saving S. Savchuk, this will open up a market of EUR 8 bn, as well as will allow an additional saving of 600-700 mcm of gas annually (app. 2% of the total Ukrainian annual consumption).

Article 379 as regards creation of favorable conditions for doing business

On October 5, MPs adopted, and on October 20, the speaker signed and submitted the draft law No. 4685 “On Electronic Trust Services”²²⁸ to the President for signature. The object of this Law is to improve the legislation on the use of the public key infrastructure and the provision of electronic trust services, the development of a unified system of electronic trust services, mutual recognition of Ukrainian and foreign certificates of public keys and electronic signatures and seals. It defines legal and organizational principles for the provision of electronic trust services, including cross-border, rights and obligations of legal entities in the area of electronic trust services. In addition, the limits of implementation of state supervision (control) are set out in compliance with the requirements of the legislation and responsibility for its

²¹⁹ https://issuu.com/571543/docs/monthly_september_2017_rs

²²⁰ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=59318

²²¹ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=59320

²²² http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=59005

²²³ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=59006

²²⁴ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=60887

²²⁵ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=62406

²²⁶ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=62378

²²⁷ <http://www.me.gov.ua/News/Detail?lang=uk-UA&id=4bd15112-be9b-49b2-9a4a-39684bc8f6ee&title=DerzhavniUstanoviZakupovuvatimutEnergoservisniPoslugiCherezProzorro>

²²⁸ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=59139

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violation. The legal and organizational principles for the implementation of electronic identification are also defined.

Articles 144-147 (current payments, capital movement, special measures, promotion of implementation and further liberalization of provisions)

The Board of the National Bank has decided to raise the discount rate up to 13.5% per annum from October 27²²⁹. Actions are aimed at preventing further deterioration of inflation expectations, due to delays in cooperation with the IMF (as a result of the lack of consensus with the government regarding the price of gas for the population) and the acceleration of consumer demand (as a result of increasing social standards, in particular the minimum wage).

The government approved the draft law on the tax on withdrawn capital and submitted it for further discussion to the National Reforms Council within the framework of the Law No. 1797²³⁰. The main objective is to introduce the taxation of the income of enterprises, which is distributed in the form of dividends or payments equivalent to them and to withdraw the income tax for non-residents.

The draft law No. 7155 on amendments to certain legislative acts on improving the procedure for making settlements in foreign currency was registered in order to increase domestic exports²³¹. It is proposed to legally limit the term for the introduction by the National Bank of Ukraine of the requirements for the mandatory sale of foreign currency receipts and the maximum term of settlements of export-import transactions.

Articles 263-267 as regards state aid to economic entities

On 5 October 2017, in connection with the numerous receipts of letters from the state resource managers, the Antimonopoly Committee adopted the Explanation No. 35-pp/дд on the Application of the Laws on State Aid²³². In particular, the government agency provided answers regarding:

- reimbursement for implementation of energy efficiency measures;
- support of natural monopolies;
- tax privileges; and other.

²²⁹

https://bank.gov.ua/control/uk/publish/article;jsessionid=353466B53FA10E8DAD9AFEC881033B0E?art_id=57732380&cat_id=55838

²³⁰ http://www.kmu.gov.ua/control/uk/publish/article?art_id=250326805&cat_id=244274160

²³¹ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=62626

²³² <http://www.amc.gov.ua/amku/doccatalog/document?id=137546&schema=main>

Methodology

ANNEX 1.

List of Articles of the Association Agreement and Acquis Subject to Monitoring

The group *Electricity and Nuclear Security* conducts monitoring and assessment of issues relating to electricity, nuclear energy, coal and elimination of consequences of the Chernobyl accident. Acquis concerned:

Article 269, Chapter 11, Title IV, Directive 2009/72/EC (market-related provisions)

Article 270, Chapter 11, Title IV, Regulation (EC) 714/2009

Article 271, Chapter 11, Title IV, Regulation (EC) 714/2009

Article 273, Chapter 11, Title IV, Regulation (EC) 714/2009, Directive 2009/72/EC

Article 274, Chapter 11, Title IV, Regulation (EC) 714/2009, Directive 2009/72/EC

Article 305, Chapter 14, Title IV, Directive 2009/72/EC, Directive 2005/89/EC

Article 338, Chapter 1, Title V

Article 338, Chapter 1, Title V, Cooperation Agreements with IFIs

Article 339, Chapter 1, Title V, coal market

Article 342, Chapter 1, Title V, cooperation in the nuclear safety sector, Council Directive 2014/87/Euratom, Council Directive 2013/59/Euratom, Council Directive 2006/117/Euratom

Article 342, Chapter 1, Title V, cooperation in the nuclear safety sector

The group *Gas* conducts monitoring and assessment of issues relating to gas, in particular, the implementation of the following acquis:

Articles 338, 341, Directive 2009/73/EC (market-related provisions)

Articles 338, 341, Regulation (EC) 715/2009

Articles 338, 341, Directive 2004/67/EC + Annex XXVI (Early Warning Mechanism), Articles 275 (Unauthorised taking of energy goods), 276 (Interruption), 309 and 314 (resolution of disputes) of the Association Agreement

Chapter 11 Trade-related energy, in particular Articles 269 (Domestic regulated prices), 270 (Prohibition of dual pricing), 271 (Customs duties and quantitative restrictions), 272 (Transit) and 273–274 (Transport, cooperation on infrastructure)

Annex XXVII to Chapter 1 Energy cooperation, including nuclear issues — Directive 94/22/EC + Articles 279–280 (Access to and exercise of the activities of prospecting, exploring for and producing hydrocarbons, and licensing conditions)

The group *Energy Efficiency and Social Issues* conducts monitoring and assessment of the implementation of the following acquis:

Directive 2010/30/EU

Directive 2010/31/EU

Directive 2006/32/EU

Directive 2012/27/EU

Directive 2009/72/EC (social issues)

Articles 338, 341 of the Association Agreement

Directive 2009/73/EC (social issues)

Articles 338, 341 of the Association Agreement

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The group *Environment and Renewable Energy Sources* conducts monitoring and assessment of the implementation of the following acquis:

Article 363, Directive 2011/92/EU
Article 363, Directive 2001/42/EC
Article 363, Directive 2003/42/EC
Article 363, Directive 2003/35/EC
Directives 85/337/EEC and 96/61/EC
Article 363, Directive 2008/50/EC
Article 363, Directive 1999/32/EC
Article 363, Directive 94/63/EC
Article 363, Directive 2009/147/EC
Article 363, Directive 2010/75/EU
Article 338, Directive 2009/28/EC

The group *Oil* conducts monitoring and assessment of the implementation of the following acquis:

Directive 2009/119/EC
Directive 94/22/EC
Directive 98/70/EC
Articles 274, Chapter 11 of the Association Agreement (Trade-related energy)
Articles 275, Chapter 11 of the Association Agreement (Trade-related energy)
Articles 276, Chapter 11 of the Association Agreement (Trade-related energy)
Articles 279, Chapter 11 of the Association Agreement (Trade-related energy)
Articles 280, Chapter 11 of the Association Agreement (Trade-related energy)
Article 337 of the Association Agreement
Article 338 of the Association Agreement
Article 339 of the Association Agreement

The group *Business Climate* conducts monitoring and assessment of the implementation of the following acquis:

Article 27, Chapter 11 (Title IV TRADE AND TRADE-RELATED MATTERS) of the Association Agreement
Article 28, Chapter 11 (Title IV TRADE AND TRADE-RELATED MATTERS) of the Association Agreement
Article 29, Chapter 11 (Title IV TRADE AND TRADE-RELATED MATTERS) of the Association Agreement
Article 88, Chapter 6 (Title IV TRADE AND TRADE-RELATED MATTERS) of the Association Agreement
Article 93, Chapter 6 (Title IV TRADE AND TRADE-RELATED MATTERS) of the Association Agreement
Articles 97-102, Chapter 6 (Title IV TRADE AND TRADE-RELATED MATTERS) of the Association Agreement
Article 104, Chapter 6 (Title IV TRADE AND TRADE-RELATED MATTERS) of the Association Agreement
Article 105, Chapter 6 (Title IV TRADE AND TRADE-RELATED MATTERS) of the Association Agreement
Article 107, Chapter 6 (Title IV TRADE AND TRADE-RELATED MATTERS) of the Association Agreement
Articles 144-147, Chapter 7 (Title IV TRADE AND TRADE-RELATED MATTERS) of the Association Agreement
Chapter 8 (Title IV TRADE AND TRADE-RELATED MATTERS) of the Association Agreement and the Directive 2014/25/EU
Article 255, Chapter 10 (Title IV TRADE AND TRADE-RELATED MATTERS) of the Association Agreement
Article 256, Chapter 10 (Title IV TRADE AND TRADE-RELATED MATTERS) of the Association Agreement
Article 258, Chapter 10 (Title IV TRADE AND TRADE-RELATED MATTERS) of the Association Agreement

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Article 263, Chapter 10 (Title IV TRADE AND TRADE-RELATED MATTERS) of the Association Agreement

Article 267, Chapter 10 (Title IV TRADE AND TRADE-RELATED MATTERS) of the Association Agreement

Article 277, Chapter 11 (Title IV TRADE AND TRADE-RELATED MATTERS) of the Association Agreement and Directives 2003/54/EC and 2003/55/EC (as regards the regulatory authority)

Articles 355-359, Chapter 5, (Title V ECONOMIC AND SECTOR COOPERATION) of the Association Agreement and Directive 2008/92/EC

Article 379, Chapter 10 (Title V ECONOMIC AND SECTOR COOPERATION) of the Association Agreement

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ANNEX 2.

Glossary (Short Description) of EU *Acquis* Subject to Implementation Monitoring

Gas

Directive 2009/73/EC concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC

This Directive establishes common rules for the transmission, distribution, supply and storage of natural gas. The rules established by this Directive apply to natural gas, liquefied natural gas (LNG), biogas and gas from biomass. They aim to achieve a competitive, secure and environmentally sustainable market. This Directive provides for compulsory functional unbundling (supply) of transmission system operators (TSO) in vertically integrated undertakings. EU Member States must ensure that all customers are entitled to freely choose natural gas supplier and can easily change supplier within three weeks. At the same time, Member States may impose on suppliers selling gas to household customers obligations which may relate to security, including security of supply, regularity, quality and price of supplies, and environmental protection, including energy efficiency.

Regulation (EU) No. 715/2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No. 1775/2005

This Regulation sets common rules for access to gas transmission systems, LNG terminals and storage facilities taking into account the special characteristics of national and regional markets. The document establishes the procedures of certification of transmission system operators, as well as development, elaboration and implementation of network codes (with the participation of the European Network of Transmission System Operators — ENTSO — for Gas). The key objective of this Regulation is to ensure that all market participants have free and non-discriminatory access to relevant infrastructure and capacities.

Directive 2004/67/EC concerning measures to safeguard security of natural gas supply

This Directive establishes a common framework within which Member States must define general, transparent and non-discriminatory security of supply policies compatible with the requirements of a competitive market, and clarify the roles and responsibilities of market players (including in case of emergency). The government must specify minimum security of supply standards to be complied with by the market players, prepare and update national emergency measures, identify “vulnerable” customers and ensure adequate security for them, establish cooperation with the European Commission and other stakeholders.

Electricity and Nuclear Security

Council Directive 2014/87/Euratom of 8 July 2014 amending Directive 2009/71/Euratom establishing a Community framework for the nuclear safety of nuclear installations

The Directive establishes a European framework for maintaining and promoting consistent improvement of nuclear safety and its regulation. It sets an ambitious safety goal across the EU in order to prevent accidents and avoid radioactive waste from nuclear installations. The directive applies to any nuclear installation subject to licensing.

Council Directive 2013/59/Euratom laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation

The Directive establishes basic safety standards to protect the health of employees, the general public, patients and others from the dangers of exposure to ionising radiation. The Directive applies to any planned, existing or emergency situation which involves a risk to ionising radiation. In particular, it applies to: the manufacture, production, processing, handling, disposal, use, storage, holding, transport, import to and export from the EU of radioactive material; the manufacture and operation of electrical equipment emitting ionising radiation; human activities with natural radiation sources that could lead to a significant increase in the exposure of employees or the public, such as the exposure of space crew to cosmic

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radiation; domestic exposure to radon gas in indoor air and external exposure to gamma radiation from building materials; managing emergency exposure situations that require measures to protect the public and workers.

Directive 2009/72/EC concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC

This Directive establishes common rules for the generation, transmission, distribution and supply of electricity. It also lays down universal service obligations and the rights of electricity consumers and clarifies competition requirements. Open internal market enables all consumers freely to choose their suppliers and all suppliers freely to deliver to their customers (free movement of goods, the freedom of establishment and the freedom to provide services). At the same time, this Directive sets stricter requirements to unbundling of transmission system operators (TSO) in vertically integrated undertakings. It also contains consumer rights provisions, reinforces and clarifies the functions and powers of regulatory authorities.

Regulation (EC) No. 714/2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No. 1228/2003

This Regulation establishes the rules for cross-border exchanges of electricity with the view to enhancing competition and achieving harmonization within the internal market in electricity. Comparing to the previous Regulation No. 1228/2003, this Regulation contains additional provisions on certification of transmission system operators (TSO), introduction of network codes and publication of information by system operators. It also clarifies that the European Network of Transmission System Operators for Electricity (the ENTSO for Electricity) is responsible for the management of electricity transmission networks to allow trading and supplying electricity across borders within the EU.

Directive 2005/89/EC concerning measures to safeguard security of electricity supply and infrastructure investment

This Directive establishes measures aimed at safeguarding security of electricity supply so as to ensure the proper functioning of the internal market for electricity, an appropriate level of interconnection between Member States, an adequate level of generation capacity and an adequate balance between supply and demand. It establishes a framework within which Member States are to define general transparent and non-discriminatory policies on security of electricity supply compatible with the requirements of a competitive market for electricity. They must define and publish roles and responsibilities of competent authorities and all relevant market actors. In implementing these measures, Member States are supposed to guarantee continuity of electricity supplies, explore possibilities for cross-border cooperation in relation to security of electricity supply, reduce the long-term effects of the growth of electricity demand, ensure diversity in electricity generation, encourage energy efficiency and the adoption of new technologies, ensure regular renewal of networks.

Council Directive 2006/117/Euratom on the supervision and control of shipments of radioactive waste and spent fuel

This Directive authorizes transboundary shipments of spent fuel between Member States for processing, requires prior authorization for transboundary shipments of radioactive waste and spent fuel where such fuel is moved from, through the territory of or to a Member State. This Directive also requires return of radioactive waste to its country of origin.

Energy Efficiency and Social Issues

Directive 2010/30/EU on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products

This Directive regulates labelling of energy-related products and provision of information to consumers relating to their consumption of electric energy. It applies to products which have a direct or indirect impact on the consumption of energy and on other resources during use. Suppliers placing products on the market must ensure that such products are labelled with the information about their consumption of energy and other resources. Suppliers must also produce technical documentation to include: a general

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description of the product; the results of design calculations carried out; test reports; the references allowing identification of similar models. The technical documentation must be available for inspection purposes for a period ending five years. Suppliers must provide the labels and product-related information free of charge to dealers, and the latter must display labels properly, in a visible and legible manner.

Directive 2010/31/EU on the energy performance of buildings

This Directive promotes the improvement of the energy performance of buildings within the Union, taking into account outdoor climatic and local conditions. It lays down minimum requirements, common general framework for a methodology and covers energy used for heating, hot water, cooling, ventilation and lighting. National authorities must establish reasonable minimum requirements to energy efficiency to be reviewed every five years. They also establish a system of certification of the energy efficiency. Such certificates provide information to prospective buyers or tenants on the energy performance of buildings, and advice on enhancing it.

Directive 2012/27/EU on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC

This Directive establishes a common framework of measures for the promotion of energy efficiency within the Union in order to ensure the achievement of the Union's 2020 20% headline target on energy efficiency. Such measures include:

- annual 1.5% energy savings resulting from implementing energy efficiency measures by distribution network operators and suppliers;
- enhancing energy performance of heating systems, installation of double-glazed windows and roof insulation;
- purchase of buildings, products and services with high energy-efficiency performance by public bodies;
- annual energy modernization of at least 3% of the total floor area of buildings owned and occupied by public bodies;
- expanding rights and possibilities of consumers in the area of energy management which includes easy and free access to the metering data on the actual consumption;
- national incentives for small and medium-sized enterprises to conduct energy audit that should be mandatory for all large enterprises;
- monitoring of the energy performance of new energy generating capacities.

Environment and Renewable Energy Sources

Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (codification)

This Directive introduces an important instrument of the environmental policy — environmental impact assessment. Member States must ensure, first of all, that projects likely to have significant effects on the environment (by virtue, *inter alia*, of their nature, size or location) are made subject to a requirement for development consent and an assessment with regard to their effects. This Directive contains two lists of projects subject to environmental impact assessment (from nuclear power stations, gas pipelines, etc., to large pig farms). An important element is stricter publicity requirements, including to the public participation in the environmental impact assessment.

Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment

This Directive introduces an important instrument of environmental policy — strategic environmental assessment. An environmental assessment must be carried out of certain plans and programmes during their preparation. Such assessment includes preparation of the environmental report (that must contain detail information on the likely significant environmental effects and reasonable alternatives) and consultations with the relevant authorities and the public. Where a transboundary effect is possible, an assessment and consultations in a transboundary context must be carried out.

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Directive 2003/4/EC on public access to environmental information and repealing Council Directive 90/313/EEC

This Directive implements the provisions of the Aarhus Conventions relating to public access to environmental information. It aims to guarantee public access to environmental information owned by public authorities — both upon request and through active dissemination thereof. Environmental information must be made available to an applicant within one month after the receipt by the public authority of the applicant's request. A request for environmental information may be refused if the request is manifestly unreasonable, or formulated in too general a manner, concerns an unfinished document or internal communications.

Directive 2003/35/EC providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC

This Directive addresses the implementation of the Aarhus Convention in respect of public participation and access to justice. It sets the requirements to the introduction of mechanisms of informing the public, holding consultations with the public and taking account of comments and proposals of the public in decision-making. Member States must ensure that the public is given early and effective opportunities to participate in the preparation and modification or review of the plans or programmes required to be drawn up under the provisions listed in Annex I of the Directive.

Directive 2008/50/EC on ambient air quality and cleaner air for Europe

This Directive establishes ambient air quality and ambient air quality management standards. For this purpose, it establishes upper and lower assessment thresholds, target and threshold values, sets objectives for the reduction of the effect of particulate matters, defines and classifies zones and agglomerations, introduces the systems of informing the public and ambient air quality assessment with respect to various pollutants. Where, in a given zone or agglomeration, there is a risk that the levels of pollutants will exceed the alert thresholds, short-term action plans must be drawn up.

Directive 1999/32/EC relating to a reduction in the sulphur content of certain liquid fuels and amending Directive 93/12/EEC, as amended by the Regulation (EC) No. 1882/2003 and Directive 2005/33/EC

The purpose of this Directive is to reduce the emissions of sulphur dioxide resulting from the combustion of certain types of liquid fuels and thereby to reduce the harmful effects of such emissions on man and the environment. It sets the maximum sulphur content in heavy fuel oil, gas oil and marine gas oils. It also specifies methods of sampling and analysis of sulphur content in fuel to check compliance with the requirements.

Directive 2009/147/EC on the conservation of wild birds (Article 4.2)

This Directive relates to the conservation of all species of naturally occurring birds in the wild state in the European territory of the Member States. The mechanism of conservation of wild birds provides for the protection of their habitats; protection and use of birds; prevention of harm that can be caused by invasive species; research and reporting. According to Article 4.2, special protection areas need to be established based on ornitological criteria. Special measures also need to be taken to protect migratory species naturally occurring in the territory of a particular state, especially in wetlands.

Directive 2010/75/EU on industrial emissions (integrated pollution prevention and control)

This Directive lays down rules on integrated prevention and control of pollution arising from industrial activities. It requires using the integrated approach to activities referred to in Annex I thereto. All installations covered by this Directive must prevent or reduce pollution due to using best available techniques, efficient energy use, prevention and control of emissions. Transparency of the integrated approach is ensured by the public participation.

Directive 2009/28/EC on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC

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This Directive provides for setting mandatory national targets for the overall share of energy from renewable sources in the overall energy balance to take account of statistics and potential of each particular country. These targets include the achievement of a 20% share of energy from renewable sources in overall Energy Community energy consumption by 2020 and a 10% target to be achieved for the share of RES in the transport sector. This Directive, among other, establishes rules for joint green energy projects between Member States and third countries and access to the grid-system of electricity produced from renewable energy sources.

Oil

Directive 2009/119/EC imposing an obligation on Member States to maintain minimum stocks of crude oil and/or petroleum products

This Directive lays down rules aimed at ensuring a high level of security of oil supply in the Community through reliable and transparent mechanisms based on solidarity amongst Member States. It provides for the adoption of such laws, regulations or administrative provisions as may be appropriate in order to ensure that the total oil stocks maintained at all times within the Community for their benefit correspond, at the very least, to 90 days of average daily net imports or 61 days of average daily inland consumption, whichever of the two quantities is greater.

Directive 98/70/EC relating to the quality of petrol and diesel fuels

The EU introduced rules prohibiting leaded petrol and limiting the permitted sulphur content in diesel fuel with the view to improving air quality and reducing greenhouse gas emissions. This Directive sets technical specifications applicable to petrol, diesel fuels and biofuels used in vehicles, as well as to gas oils used in non-road mobile machinery. Apart from the prohibition of marketing leaded petrol, Member States must conduct assessment of national consumption of fuel, adopt laws and identify the authorized body (bodies) to introduce the fuel quality monitoring system.

Directive 94/63/EC on the control of volatile organic compound (VOC) emissions resulting from the storage of petrol and its distribution from terminals to service stations, as amended by Regulation No. 1882/2003²³³

This Directive provides for the registration of all terminals used for storage, loading and unloading of oil products, installation of technical means allowing reduction of VOC emissions from mobile containers with oil products, bringing all stationary tanks, rail, marine and motor vehicle tanks and loading installations in compliance with the established requirements.

Directive 94/22/EC on the conditions for granting and using authorizations for the prospection, exploration and production of hydrocarbons

This Directive establishes common rules to ensure the non-discriminatory access to and pursuit of activities relating to the prospection, exploration and production of hydrocarbons. These objective and transparent rules reinforce integration of the internal energy market, encourage greater competition and improve security of supply. The document provides for the implementation of measures to ensure:

- equal access to all organizations possessing necessary resources for prospecting, exploring for and producing hydrocarbons;
- granting authorizations on the basis of objective, published criteria;
- communication of all necessary information to all organizations participating in the established procedures.

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Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC

This Directive aims to ensure market openness, as well as fair procurements, in particular in the energy sector: extraction (production), transmission and distribution of gas, heat, electricity.

²³³ The official translation has a lot of mistakes resulting from inaccurate translation

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Directive 2009/72/EC concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC

This Directive provides for the implementation of laws on the electricity market which defines electricity as an energy-related product to be purchased/sold/produced/transmitted/stored. These operations may be carried out by all licensed companies on equal competitive conditions. The state also ensures non-discriminatory access to the existing infrastructure, creates favourable conditions for electricity producers to invest in new forms of energy (wind, solar, etc.).

Directive 2009/73/EC concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC

This Directive provides for the implementation of laws on the gas market which defines gas as an energy-related product to be purchased/sold/produced/transmitted/stored. These operations may be carried out by all licensed companies on equal competitive conditions. The state also ensures that companies have non-discriminatory access to distribution networks, gas storage facilities and cross-border gas pipelines.

Directive 2008/92/EC concerning a Community procedure to improve the transparency of gas and electricity prices charged to industrial end-users

Pursuant to that Directive, open, generally accessible mechanisms of providing information on the prices of energy resources for customers must be introduced. A particular methodology of collection of respective information about gas and electricity prices is to be drawn up and the respective mechanism to that effect is to be introduced.