UKRAINE AND THE ASSOCIATION AGREEMENT:

NEW SEASON

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The EU4Energy Initiative covers all EU support to improve energy supply, security and connectivity, as well as to promote energy efficiency and the use of renewables in the Eastern Partner countries Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine. It does this by financing projects and programmes that help to reform energy markets and to reduce national energy dependence and consumption. Over the longer term, this makes energy supply more reliable, transparent and affordable, thus reducing energy poverty and energy bills for both citizens and the private sector. More information on: www.EU4Energy.eu

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.

The Project is supported by the European Union within the framework of EU4Energy initiative and co-funded by the International Renaissance Foundation, within the framework of the Think Tank Development Initiative for Ukraine, implemented by the International Renaissance Foundation in partnership with the Open Society Initiative for Europe (OSIFE) with the financial support of the Embassy of Sweden to Ukraine.

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CONCLUSIONS
2019 became a year of both ambitious achievements and major challenges. Ratification of the amendments to Annex XXVII of the EU-Ukraine Association Agreement, which became the first «upgrade» of the Agreement since its enactment, was a milestone event. The updated provisions provide for closer monitoring of implementation, as well as extension of the binding EU acquis. Such intensified cooperation in the energy field is aimed at achieving full integration of the Ukrainian and the EU markets. Opening of the retail and later – of the wholesale electricity market in order to comply with Directive 2009/72/EC was another key event.

Many changes have been made through the reforms started earlier, by improving the country’s energy policy in accordance with the European rules. Gas market switched to the daily balancing mode, the unbundling and certification of an independent TSO has started. The monetization of housing subsidies has been implemented, and monetization of benefits initiated. The Energy Efficiency Fund was launched and has started collecting applications for its first products. The renewable energy market is booming, and a law has been passed to move from a feed-in tariff to a more competitive auctions system. A discussion was initiated concerning the grid development, the development of flexible and accumulating capacities. Amendments to the legislation on the use of nuclear energy have been adopted, and the New Safe Confinement has been commissioned at the Chornobyl NPP site.

At the same time, the new government, which started its activity at the end of August 2019, faced a number of challenges. On the one hand, the lengthy electoral process has slowed down reforms in the field of energy and environment protection. On the other hand, distortions in gas and electricity markets, partially regulated regimes, situation on the frontline territories in the eastern Ukraine aggravated the crisis and continued the accumulation of debts. Overdue problems required solutions in all areas reflected in this monitoring, without exception. One of the key challenges to address is continuation of the Russian gas transit through Ukraine’s gas system beyond 2020.

The transition has also been complicated due to the “reboot” of practically all the government staff – both in the Verkhovna Rada and in the executive. Creation of the merged Ministry of Energy and Environmental Protection is a positive trend aimed at harmonizing energy and climate policies, but it also requires additional time and effort to establish new links between the sectors, as well as synergies both inside the Ministry and with other stakeholders. Transformation of the Ministry, changes in the subordination of specialized agencies and other authorities have put on hold some regulatory approval processes (e.g. the reporting formats for extractive companies). In many cases, implementation of policy started from scratch without proper assessment and use of prior activity (e.g., a repeated audit of state-owned mines has been announced), and in some cases ignoring the position of leading stakeholders (e.g., initiatives concerning the retrospective revision of feed-in tariffs).

Uncertainty on the status of the national regulatory authority following the Constitutional Court decision did not contribute to clarity in the markets development. The Constitutional Court decision made the future of the NEURC uncertain, causing a new round of political discussions as to whom the regulator shall be subordinated and how it should interact with the government and the parliament. It is crucial that the decision to be taken by the Verkhovna Rada on this issue remains in compliance with the European rules, and that the regulator would maintain its financial and institutional independence.

The «turbo regime» of decision-making on the top level – in the Verkhovna Rada and the Cabinet of Ministers – has in many cases caused non-compliance with the rules and procedures of discussing draft legislation and regulation with other stakeholders, thus creating an atmosphere of non-transparency and causing dissatisfaction from civil society and business community. The lack of communication concerning key changes, the lack of proper discussions have affected both the reforms perception, as well as their support, not to mention the quality of decisions being developed. In particular, the fast and unpredictable amendments made to the Electricity Market Law (regarding imports from Belarus and the Russian Federation) raised concerns about increased administrative interference in the market.

The government Action Program, being the first policy-related document adopted, does not provide a comprehensive response to the challenges, which will be faced by the country in the near future. Despite having objectives, indicators of their achievement and responsible agencies defined, the program does not contain clear measures and financial basis (in particular, with regard to the environmental policy). Experts emphasize that some of the declared actions have already been implemented, and others contain internal contradictions – e.g., there is a need to combine the objectives of «fair» energy prices and development of competitive markets.
RECOMMENDATIONS
It is important to reach a more composed implementation of the energy and environmental policies through recognizing the risks created by the «turbo regime». Unconditional compliance with the procedures and proper communication with the stakeholders would be the safeguard here. E.g., initiatives on revising the feed-in tariffs, which raised concerns of the business community and international partners of Ukraine, require the government to return to previous discussions and agree on mechanisms, which will both keep the incentives for RES development and prevent crisis scenarios.

An effective mechanism for implementing the updated Annex XXVII of the Association Agreement and its monitoring by all stakeholders is required. In our view, the European Commission should propose such a mechanism and particular responsible persons, and should monitor – jointly with the civil society organizations – the Ukrainian party compliance with the procedures. Similarly, updates to Annexes XXX-XXXI of the Association Agreement concerning environmental protection and climate change became imminent. These changes should include both the new EU legislation and implementation tools for the most complex of those.

A «one voice» policy concerning the legislative and regulatory initiatives shall become critically important for establishing credibility of reforms in Ukraine. This requires a renewed coordination system at the level of the Vice Prime Minister for European Integration and the respective deputy ministers. Abstract goals of the government Action Program need to be «translated» into clear and measurable action plans, with an independent baseline assessment to become the starting point.

The government should correct the implementation shortcomings in gas and electricity markets, as those with still high level of compliance with the Association Agreement requirements. This involves, in particular, a gradual lifting of the restrictions, which limit the development of competitive and liquid markets, as well as the continuation of systemic changes – unbundling and certification of independent operators, adoption of network codes, and promotion of exchange trading.

In addition to fast-track changes, the government has also to come up with the long-term solutions, such as implementing plans to reduce emissions and to decarbonise the energy industry in general. In this context, it is important to ensure policy continuity, using high-quality experience of both the previous government (prepared in the form of transition books) and the international technical assistance projects.

There is also a number of ready-made (and sometimes even agreed) decisions remaining not addressed, however they do not require significant efforts to make. In particular, they include the regulatory framework for creating minimal reserves of oil and petroleum products, the draft laws on energy efficiency, on the principles of GHG emissions monitoring, reporting and verification, and on the development of energy accumulation systems.

Integration of energy and climate policies should take place not only at the level of structures, but also when updating the Energy Strategy of Ukraine and developing the integrated National Energy and Climate Plan in accordance with the Energy Community recommendations. Markets liberalization will require the EU to focus its efforts on the quality training of Ukrainian stakeholders, especially public officials, with regard to the European regulatory practices.

With regard to the energy security, the Ministry of Energy and Environmental Protection and the National Security and Defence Council need to define «red lines», i.e. the committed positions that should not be violated, even in case of any short-term commercial benefits. In turn, according to the spirit and the letter of the Association Agreement, they might expect the EU sticking to the principle of solidarity, in particular regarding Nord Stream 2 gas pipeline and taking due account of all the risks of this project.
IMPLEMENTATION PROCESS

**On January 1,** monetization of the housing subsidies has been introduced (however, its mechanism was imperfect and specialists called it “pseudo-monetization”).

**On February 6,** the Cabinet of Ministers envisaged payments in cash to persons receiving subsidies for housing and utility services.

**On February 7,** the Law on Currency and Currency Transactions came into force.

**On March 1,** the daily balancing on gas market has started – a procedure which approximates the Ukrainian market operation mode to the EU gas market standards.

**On March 6,** first electronic auctions at the ProZorro system took place to sell special permits for subsoil use of oil and gas fields.

**On March 11,** the Ministry of Environment and Natural Resources has approved the action plan for the black stork protection in Ukraine.

**On March 15,** competition for 3 key positions at the Energy Efficiency Fund has been successfully finalized.

**On April 12,** the NEURC has adopted amendments to the Gas Transmission System Code, and the new approach to booking transmission services has been introduced, including the short-haul services.

**On April 17,** the government has changed the procedure of awarding the housing subsidies and benefits; as of October 1, 2019, both the subsidies and benefits have to be provided in monetary (cash and cashless) form.

**On April 17,** the Council of the EU has approved amendments to the Directive 2009/73/EC, which extends the European norms and restrictions to offshore gas pipelines from third countries (incl. Nord Stream 2).

**On April 23,** references to seven open e-services have been published, which can be used to source information on oil or gas production on a certain territory.

**On April 25,** the Verkhovna Rada has adopted the Law No. 2712-VIII concerning introduction of an auction system to support RES electricity generation.

**On May 6,** Naftogaz has filed a claim with the European Commission concerning the abuse by Gazprom of its dominating position on the European gas markets.

**On May 13,** 1000 diplomas for buildings energy efficiency certification have been issued.

**On May 18,** the President has signed the law on introducing auctions as a competitive support scheme for RES generation.

**On May 22,** the Cabinet of Ministers has approved the Concept for State Policy Implementation in the Field of Industrial Pollution.

**On June 5,** the Cabinet of Ministers has approved amendments to a mechanism of defining the regulated gas price for households and heat producers by introducing market benchmarks.
On June 6, the law ratifying the updated Annex XXVII to the Association Agreement was signed.

On June 12, the requirement to obtain a mining allotment for oil&gas production industry has been lifted.

On June 18, 200 houses have already received energy certification.

On June 19, discrepancies have been eliminated with regard to determining the deadlines for authorization procedures and compliance with the Environment Impact Assessment Law when issuing special permits for subsoil use.

On July 1, the new wholesale electricity market model has been launched.

On July 1, licensing has been introduced for business entities involved in the fuel manufacturing and storage, wholesale and/or retail.

On July 1, TSO of Ukraine LLC has taken over technical operation functions of the gas transmission system.

On July 5, winners have been approved in the tenders for conclusion of production sharing agreements on 9 prospective oil&gas fields.

On July 24, the Cabinet of Ministers has approved the Order «On amending Annexes 1-4 of the National Emissions Reduction Plan».

On August 14, the national energy efficiency target of Ukraine for the period until 2020 has been adopted.

On August 14, the Cabinet of Ministers approved the Resolution «Some issues of the state monitoring of air quality».

On August 21, a product «Gas reserve» has been proposed to households – i.e. the possibility to buy gas at summer price.

On September 11, the first application has been received by the Energy Efficiency Fund for participating in the Energodim («Energy House») program – the support program for energy modernization of multi-apartment buildings.

On September 18, the Cabinet of Ministers has approved the new plan for unbundling of gas transmission activities and support to the TSO activities.

On September 19, an international technical assistance project was launched to update the Subsoil Code.

On September 30, the updated Action Program of the Cabinet of Ministers has been published.

On October 1, control over the circulation of aviation fuel has been strengthened.

On October 4, the subsidiary of Ukrtransgas – TSO of Ukraine LLC – has filed application for the certification.

On October 16, the President has signed the law on amending the Public Procurement Law and some other legislative instruments aimed at improving public procurements.
Directive 2009/73/EC concerning common rules for the internal market in natural gas

**MARKET REFORM, CHANGES TO THE PSO SYSTEM**

Legislative initiatives registered at the Verkhovna Rada concerned mainly (directly or indirectly) the regulation of gas prices for households and provisioning of the debt financing for gas consumed. These legislative drafts consist of two groups: the first provides for modifications of the legislation on housing and utilities, the second focuses on amending the Gas Market Law. These changes provided different ways to limit prices for households (or introduce a ban on raising them), to prevent the increase of debt accumulated by households for the gas consumed, to write off all or part of debts, to prevent the suspension of gas supply to households in case of non-payment, to introduce privileges for certain categories of consumers.

At the same time, as a result of the parliament approval of amendments to Annex XXVII of the Association Agreement, new standards of interaction with the European Commission were introduced. A bilateral mechanism of monitoring the compliance of all legislative initiatives relating to the activities and reform of Ukraine’s gas sector and harmonizing them with the EU law became effective.

In early October, the Verkhovna Rada adopted the law on concession, which is important for the potential involvement of international partners in the management of Ukrainian gas system; the mentioned Law was passed on to the President for signing. The document defines the terms of concession as a form of public-private partnership aimed at the transfer of state property for temporary use to private investors selected through a tender procedure. Also in October, the parliament effectively considered the draft laws concerning unbundling of an independent TSO in accordance with the provisions of Directive 2009/73/EC (No.2239 and No.2239-1).

The Ministry of Energy and Coal Industry has, in its turn, initiated the transfer of settlements to energy units (kWh). The substance of the proposal is to reserve with the government the right to introduce gas consumption metering in energy units within a certain period of time. Also, in the context of discussions with foreign partners concerning the creation of a gas hub in Ukraine, in late July the Ministry of Energy and Coal Industry proposed for discussion draft amendments to the Gas Market Law, which were required for the introduction of exchange and clearing activities in the gas market. The document provides for the introduction of appropriate terms and the state regulation measures in this sector (concerning exchange trading, OTC trading, brokerage, risk management). At the same time, the draft law proposes to confer to the Ministry of Energy and Coal Industry powers that are not inherent to this authority and which, as a matter of fact, are the functions performed by the respective regulators – the NEURC and the National Securities and Stock Market Commission (NSSMC).

In order to harmonize the national legislation on instrumentation with the EU standards, the Cabinet of Ministers introduced changes to the Technical Regulation concerning the gas-powered devices (Resolution No.245). Changes concern the systems for determining the conformity of devices to the requirements of the energy products ecodesign (item 5 of the Regulation). Mutual recognition of the results of the conformity assessment will facilitate the free access of gas-powered devices to the markets of parties.
Alongside with the legislators, the government also made efforts to address the price issue. In April, after Naftogaz has decreased prices for the industry, they appeared to be lower than the regulated price for households and heat producers. Therefore, the government has proposed to reduce it also for consumers under the PSO (Resolution No.293\(^9\)). However, Naftogaz rejected the proposal reasoning it by a legal conflict between resolutions No.293 and No.867\(^10\) (concerning the approval of PSO Regulation).

In practice, the gas price under PSO was lowered only after the Resolution No.380\(^11\) was approved by the Cabinet of Ministers, which introduced a new rule: the regulated gas price is determined as the arithmetic mean of the Naftogaz sale price to industrial consumers over the previous month, subject to an advance payment, and in case if over 50 tcm have been purchased. In June, the Cabinet of Ministers approved further changes (Resolution No.485\(^12\)), according to which, subject to the PSO Regulation, from June 1, 2019, the lowest of the four following price values (excluding VAT) shall apply:

1) the average customs value of the imported gas (Ministry of Economic Development);
2) the weighted average price in exchange trade (Ukrainian Energy Exchange);
3) the arithmetic mean price applied for the industry, under advance payment (Naftogaz);
4) the price regulated under the PSO (calculated according to the Resolution No.867).

The final end-user (retail) price of natural gas is differentiated by regions depending on the tariff for gas distribution set by the NEURC.

Already in August, Naftogaz has offered a new product to domestic gas consumers – an opportunity to purchase up to 25 tcm of gas at the summer price, for using in the heating season 2019/2020. Under this promotion, the price offered by Naftogaz to the retail gas supply companies (excluding VAT and transportation costs) is 4874.42 UAH/tcm\(^14\).

**UNBUNDLING**

In the period monitored, a consensus was reached on the vision of final unbundling model between the government and Naftogaz, and accelerated implementation of the new model was launched.

In January, the CEO of Naftogaz Andriy Kobolyev introduced to the public the proposed option of unbundling based on the ISO (Independent System Operator) model, which envisaged the transfer of gas system under concession\(^15\). A new legal entity – Transmission System Operator of Ukraine (TSOU) was created in the form of LLC\(^16\) under JSC Ukrtransgaz; this company was planned to be transferred to JSC Mahistralni Gazoprovody Ukrainy (MGU) from January 1, 2020.

In March, Naftogaz announced the signing of an agreement with European operators to promote the unbundling process. The working group included Naftogaz, Ukrtransgaz, MGU on the Ukrainian side, and GRTgaz S.A. (France), N.V. Nederlandse Gasunie (Netherlands), Snam S.p.A. (Italy), Eustream a.s. (Slovakia) and Fluxys S.A. (Belgium) on the European side.

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9  https://www.kmu.gov.ua/ua/npas/deyaki-pitannya-diyalnosti-akcionernogo-tovaristva-nacionalna-a123
11  https://www.kmu.gov.ua/ua/npas/pro-zatverdzhennya-polozhennya-pro-123
12  https://www.kmu.gov.ua/ua/npas/pro-vnesennya-zmin-do-postanovi-kabinetu-ministriv-ukrayini-vid-3-kvitnya-
13  2019-r-293
15  019&month=08&nt=%D0%9D%D0%BE%D0%B2%D0%BD%D0%B8&
At the May meeting of the Coordination Council on Fuel and Energy Reform\(^\text{18}\), the government proposed to Naftogaz to take immediate actions for implementing the government decision\(^\text{19}\) to unbundle the TSO under the OU (Ownership Unbundling) model adopted back in July 2016 (CMU Resolution No.496\(^\text{20}\)), which would allow to complete the process by the end of the current year. According to the Prime Minister Volodymyr Groysman, this decision took into account the requirements of international partners and did not require any amendments to the legislation.

The Cabinet of Ministers adopted the next decision to implement unbundling in the beginning of June (Resolution No.484\(^\text{21}\)). According to the updated plan, Naftogaz had to submit to the government before August 1, 2019, a draft act designating MGU to be the state-owned entity operating the assets accounted on the balance of Ukrtransgaz (main gas pipelines, compressor stations, storage facilities, etc.), as well as to develop and approve other measures essential for the proper functioning of MGU as the TSO from January 1, 2020. The Ministry of Economic Development, the Ministry of Energy and Coal Industry and the State Property Fund were to ensure the transfer of assets to the balance sheet of MGU. Thereafter, the government planned to temporarily grant Naftogaz responsibilities of the corporate governance of MGU, while providing for the unconditional return of those powers to the Ministry of Energy and Coal Industry on January 1, 2020.

Instead, Naftogaz denied the feasibility of such a procedure\(^\text{22}\) by referring to possible difficulties in signing a new transit contract with Gazprom and weakening the company’s position in Stockholm arbitration\(^\text{23}\). The company continued to insist on implementing the ISO model\(^\text{24,25}\) and to develop its own project: from July 1, the technical functions of the gas system operation\(^\text{26}\) were transferred to TSOU, and for this purpose, Ukrtransgaz has transferred relevant employees and processes\(^\text{27}\), and later – even contracts.

The team responsible for the implementation of the unbundling roadmap, in cooperation with international consultants, has created the necessary package of documents\(^\text{28}\) for the certification of the new TSO. Already on October 4, TSOU LLC has filed a certification request\(^\text{29}\). According to the certification procedure\(^\text{30}\), the process of considering and accepting the NEURC preliminary certification decision (or denying it) alone, before being submitted for approval to the Energy Community Secretariat, takes about 4 months. It should be noted that the regulator has adopted a number of changes (Resolution No.1733\(^\text{31}\)) that provide for the conditional certification decision, including the conditions required to be mandatory fulfilled by the TSO before the final certification decision is taken by the NEURC.

The unbundling was accelerated after the change of government and in the context of preparation for the autumn rounds of the EC-Ukraine-Russia trilateral negotiations on gas transit. On September 9, in

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\(^{20}\) https://zakon.rada.gov.ua/laws/show/496-2016-%D0%BF

\(^{21}\) https://zakon.rada.gov.ua/laws/show/484-2019-%D0%BF#n2


\(^{23}\) https://www.facebook.com/yuriy.vitrenko/posts/10156569493363458


\(^{25}\) http://www.naftogaz.com/www/3/nakweb.nsf/0/C3145979912C80ECC225842B0051EB1D?OpenDocument&year=2019&month=07&nt=%D0%9D%D0%BE%D0%B2%D0%B8%D0%BD%D0%B0&


\(^{28}\) Ibid.

\(^{29}\) https://zakon.rada.gov.ua/laws/show/z0996-16


\(^{31}\) http://www.nerc.gov.ua/index.php?id=43849
Brussels\textsuperscript{32}, the Ukrainian party presented to the European Commission representatives a new model of unbundling. The government decision (CMU Resolution No.840\textsuperscript{33}) was adopted on September 18. The new unbundling model proposed by the Cabinet of Ministers, together with the updated plan for its implementation, became a compromise and was approved by the European partners, in particular «as an element important for the successful outcome of the trilateral negotiations»\textsuperscript{34}.

According to the plan, TSO of Ukraine (TSOU) LLC\textsuperscript{35} will become the independent and duly certified gas TSO under the ISO model. The gas transmission system will be transferred to the operator for economic management, whereas remaining state-owned asset. On January 1, 2020, legal unbundling will take place: MGU, subordinated to the Ministry of Finance, will receive 100% of the authorized capital in TSOU.

Effective voting for legislative amendments\textsuperscript{36} has secured the progress towards certification, as it provides for the mandate of the Ministry of Finance for independent oversight, the ability for TSO to exercise all functions without exception (through covering all respective costs), as well as additional powers of the regulator (including the arbitration in disputes between the TSO and the system owner). At present, the efforts of participants to the unbundling process are focused on organizing the launch of the new TSO to the market from January 1, 2020, and maintaining the continuity of gas transmission activities.

**CORPORATE GOVERNANCE**

Given the lack of legislative changes, the reform of corporate governance in the oil and gas sector is far from being advanced. However, the government has promptly replaced the state representatives in the Supervisory Board of Naftogaz, and has also outlined by a separate document “clear goals” for the company – conducting market activities and performing special functions (Order No.456-r\textsuperscript{37}).

The new Cabinet of Ministers has withdrawn an appeal to the court decision\textsuperscript{38} which has allowed Naftogaz to not transfer 90% of its net profits to the budget. And the Verkhovna Rada Committee on Energy and Utilities addressed the government and the Ministry of Finance\textsuperscript{39} to revise the standard of profit share payments for state energy companies, and to reduce it to 30% maximum\textsuperscript{40}. According to the consolidated financial statements\textsuperscript{41}, Naftogaz has increased 1.8 times its net profit (by 11.1 bn UAH) in 1H2019, up to 24.7 bn UAH compared to the same period of 2018.

However, the Supreme Court cassation proceedings (Case No.640/7955/19)\textsuperscript{42} remain concerning the government’s complaint, which did not refuse its intention to reclaim the right to appoint and dismiss the CEO of Naftogaz without agreement of the company’s Supervisory Board.

**REGULATORY ACTIVITIES**

Licensing and control of the process of daily balancing were major activities of the regulator. In addition, the NEURC has released reports on its performance in all regulatory sectors in 2018\textsuperscript{43}, including

\textsuperscript{32}http://mpe.kmu.gov.ua/minugol/control/uk/publish/article;jsessionid=C384A6A93EE3B1673AA935CF50744B81.appt?art_id=245394643&cat_id=35109
\textsuperscript{33}https://www.kmu.gov.ua/ua/npas/pro-vidokremlennya-diyalnosti-z-tran-180919-840
\textsuperscript{34}https://twitter.com/MarosSefcovic/status/1174631593014628353
\textsuperscript{35}Currently, TSOU is performing the function of the Ukrainian gas system technical operation and is 100% owned by JSC Ukrtransgaz
\textsuperscript{36}http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=67105
\textsuperscript{38}http://www.reyestr.court.gov.ua/Review/84165105
\textsuperscript{40}http://kompek.rada.gov.ua/uploads/documents/30513.pdf
\textsuperscript{41}http://www.naftogaz.com/files/Zvity/Naftogaz-6m2019fs-Consolidated_UKR.pdf
\textsuperscript{42}http://reyestr.court.gov.ua/Review/83330669
the monitoring of natural gas market developments. The regulator has also updated the instruction concerning the monitoring of oil and gas markets (Resolution No.615\textsuperscript{44}), establishing thereby a new system of indications, monitoring procedures and rules for disclosing the results. The NEURC has also approved changes to the monitoring-related reporting formats and guidelines for their filling-in (Resolution No.1623\textsuperscript{45}); the changes are due to the adaptation to the current legislation, as well as the requirement to automatically collect and process data.

At the same time, the regulator approved several versions of amendments to the Gas Transmission System Code and the Model Agreement for Natural Gas Transportation. The first document (Resolution No.558\textsuperscript{46}) provides for the possibility to simultaneously buy gas from several suppliers at one point of commercial accounting\textsuperscript{47}. This rule is intended to promote competition in the gas supply market for industry.

The second document (Resolution No.580\textsuperscript{48}) envisages the possibility to book capacity at entry/exit points and to reimburse the related costs not by consumers, but by customers of transmission services. In fact, this is a change of approach aimed at achieving greater accuracy in calculating long-term system load. The TSO press service emphasized\textsuperscript{49} that the new approach, along with the approval of tariffs for virtual exit points to gas distribution networks, direct consumers and connected gas producers, will allow offering short-haul services, and therefore contribute to further use the potential of Ukrainian gas transmission system. According to the representatives of Uktrransgaz\textsuperscript{50}, in practice this means to provide traders with the opportunity to transit gas at competitive prices via Ukraine between such neighbouring countries as Poland, Hungary, Slovakia, and Romania.

**Conclusion:**

The government still did not lift price regulation for the segment of households and heat producers, although it has brought prices closer to the market level by including new benchmarks to the formula. Conflict between the government position and Naftogaz vision of the TSO unbundling process was overcome only after the change of the Cabinet of Ministers and under the influence of trilateral negotiations on gas transit. In that way, the unbundling process has been unblocked; however, it is ongoing in the «turbo regime». We shall also note the activity performed by the regulator to improve network codes and rules aimed at greater flexibility and liquidity of the market.

\textsuperscript{44} http://www.nerc.gov.ua/?id=40394
\textsuperscript{45} http://www.nerc.gov.ua/index.php?id=43413
\textsuperscript{46} http://www.nerc.gov.ua/?id=40188
\textsuperscript{47} For the consumers with annual consumption over 3 mcm
\textsuperscript{48} http://www.nerc.gov.ua/?id=40273
\textsuperscript{49} http://reform.energy/news/poslednie-izmeneniya-v-kodeks-gts-sposobstvuyut-sozdaniu-regionalnogo-gazovo-
go-khaba-s-tsentrom-v-ukraine-ukrtransgaz-11133
\textsuperscript{50} https://www.facebook.com/photo.php?fbid=10156649343209081&set=a.10150101709879081&type=3
Access to the TSO services, issues concerning trade and interaction of operators (Articles 269-274, 338, 341, Annex XXVII-B of the AA, in particular Regulation (EC) No. 715/2009 on conditions for access to the natural gas transportation networks, and network codes)

**DAILY BALANCING**

Only by the end of January, Ukrtransgaz announced the availability of an information platform to shift to the daily balancing\(^{51}\), while at the same time it has announced problems\(^{52}\) with filling-in the databases: in average, the scope of data entered by DSOs concerning gas offtake and consumption did not exceed 72%.

On the background of appeals to postpone the mode – made by both the TSO\(^ {53}\) and other market participants\(^ {54}\) – however, due to the decisive position of the regulator\(^ {55, 56}\), the daily balancing was finally launched in Ukraine on March 1. This procedure brings the Ukrainian gas market operation closer to the integration with the EU gas market. The information platform of Ukrtransgaz started running in the regular mode\(^ {57}\) and became available online: the number of submitted and confirmed nominations, the number of registered consumers, the EIC codes of suppliers, the supply disconnection registry. The operators’ representatives stated that the customers respond adequately to all transactions, and the average information availability of the information concerning the actual daily consumption reaches app. 95%\(^ {58}\). During the month, the daily balancing mode was implemented without incidents, and on April 1, JSC Ukrtransgaz started receiving daily data from DSOs for each gas day of March\(^ {59}\).

Improvement of the Gas Transmission System Code in terms of standardization of daily balancing (the NEURC Resolution No.558\(^ {60}\)) has regulated such mechanisms as allocation algorithm (a derivative of which is the allocation agreement), balancing group (ability to pay for daily imbalances of the whole group of customers), and the introduction of the balancing neutrality charges (from January 1, 2020). The regulator also approved other amendments to the Code that relate to the new edition of financial security provisions\(^ {61}\).

In April, during the unannounced inspection of the daily balancing implementation by the TSO\(^ {62}\), the NEURC has examined in details the functioning of Ukrtransgaz platform regarding gas allocations at exit points, timely registration of consumers by suppliers, and provision of consumer’s registers to the suppliers, as well as acceptance of nominations and renominations. Regulator’s opinion was that the platform is working without violations\(^ {63}\).

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54 https://www.facebook.com/gastraders/photos/a.1063438687051218/2218837544844654/?type=3
55 http://www.nerc.gov.ua/?id=38051
56 http://www.nerc.gov.ua/?id=38052
60 http://www.nerc.gov.ua/?id=40188
61 http://www.nerc.gov.ua/?id=41211
In September, the TSO operator decided to change the method of setting the marginal price, moving from its monthly determination to daily rates. As of October 1, the marginal price is published daily in automatic mode on the Information platform of Ukrtransgaz. In order to fully synchronize with the European standards regarding the calculation of payment for imbalances, it is necessary to implement the third method of setting the marginal price as provided by the Gas Transmission System Code – on the basis of exchange quotations, for which functioning of a liquid gas trading is to be ensured.

However, the introduction of daily balancing revealed a number of problems. In the first instance, it is about the negative imbalances that result from taking gas from the system either over the approved nominations or without nominations. According to Ukrtransgaz, in 5 months of operating in the new mode, the negative imbalance reached 4 bn UAH, and payments level – only 3%. This situation does not allow the TSO to settle obligations in time, including failed tenders for the purchase of gas for own technological needs. On June 20, Ukrtransgaz has warned NEURC, the State Emergency Service and the National Security and Defence Council concerning the “preconditions of a national emergency situation”.

From the TSO viewpoint, the negative imbalance is caused mainly by unauthorized gas offtake by DSOs for their own needs. Instead, members of the Gas Traders Association drew attention of the NEURC and the executive authorities to the fact that current version of the Gas Transmission System Code allows DSOs and district heating companies to accrue debts for negative imbalances. The Gas Market Association joined them by pointing to the economically unreasonable tariffs for gas distribution and transmission being an additional reason and by suggesting the regulator to remedy the situation.

The Cabinet of Ministers prevented the threat by agreeing the urgent purchase of gas at a regulated price by Ukrtransgaz from Naftogaz to cover technological needs (Order No. 546-r). Though the national emergency situation at the Ukrainian gas system facilities is over, the situation with debts has not changed. According to Naftogaz, this situation is critical and needs to be “urgently addressed” as it represents a threat to the reputation of Ukrainian companies in the European gas market.

In its turn, the regulator has amended the Gas Supply Rules, allowing no penalties to be applied to the heating companies, as well as housing associations with own boiler rooms (which receive gas under the PSO Regulations) for actual consumption of gas volumes which are above the ordered ones. The adoption of the document is intended to protect the rights of these consumers and reduce the financial burden.
After the temporary tariffs of Ukrtransgaz for entry/exit points were decreased almost twice in December 2018, the opportunity was opened to implement new types of transactions. In particular, Ukrtransgaz started negotiations with the Polish TSO Gaz-System on supporting transit flows (forward/reverse flow) through the Hermanowice interconnector, and a number of companies started first testing and later commercial gas exports to Europe.

In April, the NEURC Resolution No.156 of February 5, 2019 was enacted concerning the procedure for dispute settlement between entities operating in the energy and utilities sectors. It is important for the gas field that the approved procedures regulate the reconciliation of disputes arising between market entities regarding access / connection to gas networks.

In July, the regulator approved new tariffs for the natural gas storage services (Resolution No.1480). Provided that the tariff of 0.172 UAH/tcm/day for storage of natural gas at storage facilities of Ukrtransgaz is maintained, the NEURC raised the tariffs for injection services up to 93.3 UAH/tcm/day and for withdrawal – up to 97.2 UAH/tcm/day.

A separate platform was created to register the exchange operations of gas in the storage facilities by the Ukrtransgaz branch – Storage System Operator of Ukraine (SSOU). As of August 1, the customers have to submit simultaneously two nominations/renominations for the same volume of gas: one to the Platform of SSOU, another – to the TSO Platform.

The NEURC has also adopted amendments to the Methodology for calculating the tariffs for natural gas transportation services for entry/exit points based on the long-term incentive-based regulation. In particular, the new tariff methodology is based on the main methodology of the Commission Regulation (EU) 2017/460 – capacity weighted distance reference price of transportation for each entry/exit point, which are grouped into clusters.

In addition, the regulator also amended the Distribution Systems Code, the model distribution contract and the Methodology for determining and calculating the tariff for natural gas distribution services. The essence of innovations is to restore the structure of gas distribution tariffs on the basis of so-called ‘user fee’ (the cancellation of which in 2017 was due to the protests by the public and politicians) and to set the new distribution tariffs based on ordered capacity. Additional protection of household consumers is envisaged, including the simplified procedure of ordering the capacity – on the basis of actual volumes of gas consumption in the previous periods. The regulator has also managed to calculate and publish drafts of new tariffs for gas DSOs, which are significantly increasing; however, they were not adopted at the time this report was in preparation.

In parallel, the NEURC intends to amend also the license terms for natural gas distribution. The proposed changes are about protecting the rights of entities having access and connection to distribution systems and include, in particular, requirements to DSOs for protection of their customers from unreasonable price increases. These requirements include the following regulations: procedures for the procurement of necessary works, goods and services, use of electronic systems, participation in the transparent competitive bidding for technological gas for own needs, etc.

74 https://expyro.com.ua/novini/kraft-enerdji-eksportuvala-gaz-v-ugorschinu
75 http://www.nerc.gov.ua/index.php?id=38463
76 http://www.nerc.gov.ua/?id=42915
77 All tariffs presented are exclusive VAT
80 http://www.nerc.gov.ua/?id=45133
81 http://www.nerc.gov.ua/?id=43104
82 http://www.nerc.gov.ua/?news=9278
Experts from the Energy Community Secretariat have presented the results of several reports. The first of them83, aimed at improving the regulatory environment in the Ukrainian gas market, provides best practices for monitoring the activities of DSOs and small suppliers by regulators of the EU and the Energy Community. The second84 presents the results of legal analysis of the Ukrainian regulatory framework in order to identify the possibility of meeting the requirements of Regulation (EU) 347/2013 on guidelines for the trans-European energy infrastructure.

The third study – on the implementation of the requirements of Commission Regulation (EU) 2015/703 establishing a network code on interoperability and data exchange rules85 – showed that the mandatory application of its provisions at cross-border entry/exit points between Ukraine and the EU Member States has not yet been regulated. While recognizing that Ukrtransgaz applies the Code requirements on metering, data exchange and gas quality monitoring indicators, the Secretariat has called for the transposition of Regulation (EU) 2015/703 in order to legally oblige and enforce it, as well as to bring in compliance all the current and future interconnection agreements the neighbouring TSOs.

Conclusion:

Launch of the daily balancing and determining of the marginal price became progressive steps that brought the Ukrainian gas system balancing closer to the European norms. However, the problem of negative imbalances remains far from being resolved. New tariff methodology for gas transmission has harmonized the Ukrainian approach with the Commission Regulation (EU) No. 2017/460. At the same time, the requirements of the Commission Regulation (EU) No. 2015/703 and the Regulation (EU) No. 347/2013 need to be fully implemented in the near future.


SECURITY OF SUPPLY POLICY

In July, the Ministry of Energy and Coal Industry released the Report on results of the security of gas supply monitoring in 201886. Document was prepared by JSC Ukrtransgaz in accordance with the requirements of Article 29 of the Treaty establishing the Energy Community, Article 7 of the Gas Market Law, as well as the National Action Plan and Security of Gas Supply Rules (subject to requirement of the Regulation (EC) 2017/1938). The report analyzes the security of supply measures, including those in the crisis periods of March 2018, as well as provides information on measures to diversify sources of gas supply and to ensure the reliable functioning of gas transmission system.

The government’s 2019 Priority Action Plan (Order No.1106-r87) identified the need to address at the legislative level a number of issues related to improving energy security and energy independence.

of Ukraine. To accomplish this task, the Ministry of Energy and Coal Industry has developed and published conceptual provisions of the draft Law on Fundamentals of Energy Security. Reasoning the need of developing this act, the ministry representatives highlighted the lack of a holistic approach to issues concerning shaping and implementation of public policy in the energy security field.

Materials refer to the basic issues of policy implementation, in particular to the Energy Strategy as a long-term policy document, the Energy Resilience Plan being a short-term policy document (up to 5 years), the energy balance as an assessment form for the resource and technological basis. The Ministry has also addressed monitoring issues, which provide for the annual preparation of the Energy Security Report (restricted-access document) and the Assessment of Energy Security Threats (public document), as well as the risk management system and features of the sector’s operation in emergency. Inter alia, the draft law defines the role and powers of the Interagency Crisis Headquarters in Energy and the Interagency Commission (Coordination Centre) on Energy Security.

The Ministry of Energy and Coal Industry has also presented draft amendments to the procedure of technical and precautionary measures required to ensure stable free operation of gas supply systems in order to improve those. The agency has also prepared a new procedure for the operation and certification of gas supply systems, which is expected to significantly improve the control over the technical condition of gas supply facilities.

At the meeting of the Gas Sub-Group of the Security of Supply Coordination Group in March, representatives of the Ministry of Energy and Coal Industry reported on the training held with the European Commission Joint Research Centre (JRC) on crisis response and on the amendments made to the Security of Supply Rules and the National Action Plan, according to which requirements have been set for the development of consumer lists and for determining the disconnection order.

PREPARATORY ACTIVITIES

The proposal of the Ministry of Energy and Coal Industry to keep the insurance gas reserve in 2020 (at 10% of the planned monthly supplies only in case of crisis) was announced at the end of June. Despite the risks associated with the high probability of termination of the Russian gas transit from January 1, 2020, the agency argued that gas suppliers did not have to bear financial burden of 2.037 bn UAH in summer and 3.396 bn UAH in winter.

In the new heating season, the Cabinet of Ministers also decided to extend for state-owned cogeneration plants the mandatory minimum level of payments for gas supplied by Naftogaz under PSO (Resolution No.85794), which was earlier decreased from 90% to 60%. According to officials, this decision will ensure uninterrupted supply of heat to the residents of the respective regions.

By early October, Naftogaz had completed the key task of preparing for the heating season by having accumulated in storages gas reserves of 20.5 bcm (4.2 bcm more compared to 2018) and concluded a deal with a major foreign company for 450 mcm of guaranteed gas imports in 1Q2020. Gas injection volumes have increased, not least due to the increase in imports coming only from the EU countries. In the first 9 months of 2019, 11.6 bcm were imported (up 44% compared to the same period of 2018), with storage injection reaching 11.8 bcm (+34%).

89 http://mpe.kmu.gov.ua/minugol/control/uk/publish/article?art_id=245387725&cat_id=244946928
95 http://www.naftogaz.com/www/3/na/krbnservis.php?/OC6A48F0289F7067C2258489004BA026?OpenDocument&year=2019&month=10&nt=%D0%9D%D0%BE%D0%B2%D0%B8%D0%BD%D0%B8
Since the beginning of summer 2019, the demand of international traders for gas storage services in Ukraine has increased\(^97\), showing an increasing confidence in cooperation with the TSO of Ukraine, despite the risks involved. According to the operational data of Ukrtransgaz, on September 26\(^98\), 6.7 bcm of the volumes injected at that date (20.1 bcm) were stored in the «customs warehouse» mode.

In addition to providing gas storage services, Naftogaz has also taken steps to organize the technical possibilities of gas imports from the EU countries, in the case of suspension of gas transit from Russia. E.g., from May 30, 2019, by mutual agreement with the Hungarian gas TSO FGSZ, Ukrtransgaz has increased by 14\(^%\)^99 the technical capacity of gas transmission in the Hungary-Ukraine direction.

Agreements have also been reached with Moldova on a reverse gas supplies from Romania for 1.5 bcm per annum. The necessary capacities (reverse flow at the Transit-1 pipeline) will be created by January 1, 2020\(^100\); for this purpose, the TSOs of Ukraine and Moldova agreed on technical solutions for the modernization of Grebenyky and Kaushany gas metering stations. In addition, the Ukrainian party plans to build additional bypass pipelines and install new technological facilities. In addition, the government has instructed Naftogaz jointly with JSC Ukrtransgaz\(^101\) and other parties to take measures for gas supply to the city of Mohyliv-Podilsky in order to guarantee deliveries to Moldova without involvement of Russian Gazprom\(^102\). For both countries, such cooperation is of great importance as it does not depend on the transit of Russian gas and makes it possible to ensure stable gas supplies to consumers.

At the visit of the President Volodymyr Zelenskyi to Poland, a memorandum on trilateral cooperation (Ukraine-Poland-U.S.) in gas sector\(^103\) was signed, including arrangements of liquefied natural gas supplies as one of the important steps of supply diversification. The Polish party believes that the possibility of such deliveries will be opened after the expansion of the LNG terminal in Swinoujscie\(^104\) and the construction of the Baltic Pipe gas pipeline in 2022. Some Ukrainian market players have already contracted American gas to be delivered to Swinoujscie. According to the Minister of Energy and Environment Oleksiy Orzhel\(^105\), the implementation of the Ukraine-Poland interconnector project\(^106\) could facilitate bilateral cooperation; further activity is expected at the level of expert groups.

As early as at the beginning of 2019, German auditors—representatives of the international certification authority TÜV SÜD, after conducting a supervisory audit at JSC Ukrtransgaz, confirmed that the Ukrainian gas system complies with international standards\(^107\).

At the end of August, Ukrtransgaz together with Naftogaz conducted a joint training of dispatchers, aimed at training the interaction of company employees in the event of transit disruption\(^108\). At the training, the experts simulated several probable transit termination scenarios. For each of them, Ukrtransgaz proposed response measures; the trainings showed that the gas system of Ukraine is ready for the stable operation provided any scenario. In addition, the company has established emergency operation centers to prevent extraordinary situations.

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\(^98\) [https://www.facebook.com/utg.ua/photos/a.229297467194177/126680133010447/?type=3&theater](https://www.facebook.com/utg.ua/photos/a.229297467194177/126680133010447/?type=3&theater)


\(^101\) [https://www.kmu.gov.ua/npas/deyaki-pitannya-opalyuvalnogo-periodu-201920-m921290919roku](https://www.kmu.gov.ua/npas/deyaki-pitannya-opalyuvalnogo-periodu-201920-m921290919roku)

\(^102\) The currently applicable gas contract between Moldova and Russia is valid until the end of 2019, similarly to Ukraine


Generally, Ukrtransgaz held nearly 250 emergency trainings\textsuperscript{109} prior to the heating season and has 100\% completed the preparatory plan for repairs and modernization of the gas system\textsuperscript{110}. Some of the implemented measures were aimed at testing the reverse operation in case of interruption of gas transit, and the results of these tests have confirmed the technical ability to provide the reverse flow. E.g., five compressor stations have been upgraded to operate in the reverse mode (Khust, Bogorodchany, Husyatin, Bar, Oleksandrivka)\textsuperscript{111}. In the case of partial or complete suspension of transit, this will enable the start of an uninterrupted gas supply to Ukrainian consumers in the Eastern and Southern regions from Europe and Western Ukrainian gas storage facilities. Ukrtransgaz has also successfully tested the reverse flow at a section of the Soyuz main gas pipeline\textsuperscript{112}. Testing at the maximum capacity did not have any negative impact on transit, as in parallel, bookings of Gazprom were executed in full.

**TRILATERAL NEGOTIATIONS**

The long-awaited negotiations on the contract for continued transit of Russian gas via the Ukrainian system after 2019 took place in Brussels, in a trilateral format (EC-Ukraine-Russia) on January 21\textsuperscript{113}, September 19\textsuperscript{114} and October 28\textsuperscript{115}. Practically, each of these rounds was preceded by technical consultations at the expert level.

Gazprom’s principal position, outlined at the second round of negotiations, was the statement it still does not recognize the Stockholm arbitration awards and offers Naftogaz a «simple contract» without any consultations and without any guarantees\textsuperscript{116}. The Ukrainian party, in consensus with the European Commission, emphasized the need to conclude a new long-term contract starting from 2020, in compliance with the European rules. According to the reputable foreign media\textsuperscript{117}, the Russian monopolist prefers to conclude a short-term agreement that would allow it to complete the construction of pipelines bypassing the Ukrainian gas system.

At the negotiations in September, for the first time the Russian delegation did not deny the possibility of further cooperation based on the European legislation, provided that its provisions were fully implemented by Ukraine by the end of the year. The Ukrainian party, has, in turn, submitted draft interconnection agreement, standard agreement on gas transportation, as well as a road map of the TSO unbundling process\textsuperscript{118}.

Russia constructing the bypassing gas pipeline Nord Stream 2 met serious legal obstacles, despite the fact that Denmark, upon a lengthy review of applications\textsuperscript{119} and refusal to agree the alternative route\textsuperscript{120}, gave after all a permit for the construction in its territorial waters. After all, any delay in the implementation of the projectstrengthens Ukraine’s position in negotiations with Gazprom.

In April, the Council has finally approved amendments to the Gas Directive, which stipulates the
extension of European rules and restrictions to offshore pipelines from/to third countries. In July, Nord Stream 2 AG has filed a lawsuit with the ECJ in Luxembourg, calling to cancel the amendments as being discriminatory. Therefore, an issue of how the Third Energy Package will be applied to Nord Stream 2 and what will be the legal framework for this project, will become more important.

On May 6, Naftogaz filed a complaint to the European Commission about Gazprom’s abuse of dominant position in the European markets. The Naftogaz appeal concerns mainly the negative impact made by the Nord Stream 2 project. As it was emphasized, the appeal «reveals the new discriminatory practices by Gazprom that were not covered by the European Commission binding decision of 2018»122. Inter alia, it states that the change in gas flows in Europe caused by Gazprom would make the virtual reverse flow through Ukraine impossible and would negatively affect gas trade between the EU member states in Eastern Europe.

Instead, in September, the ECJ on Poland’s complaint ruled to cancel the European Commission decision123 that allowed Gazprom to de facto monopolize the OPAL pipeline, one of Nord Stream 1 onshore extensions in Germany. OPAL Gastransport GmbH, operator of the pipeline, has announced a capacity restriction124 by approximately 12.3 bcm per annum. According to the CEO of Naftogaz Andriy Kobolyev125, gas transmission systems of Ukraine and Slovakia are ready to replace OPAL services and deliver the necessary volumes of Russian gas to Europe.

**Conclusion:**

The level of implementation of the AA requirements in security of gas supply is high. In addition to the National Action Plan and the Security of Supply Rules, a broader legal framework for the energy security policy is being developed. The TSO and the government of Ukraine have carried out the necessary preparations and mastered the response plans related to the scenarios of a complete termination of gas transit from January 1, 2020; unfortunately, despite some progress in the trilateral negotiations, this scenario remains highly likely.

**Access and implementation of gas exploration and production activities**

(Articles 279-280, Annex XXVII-B of the AA, in particular Directive 94/22/EC on the conditions for granting and using authorizations for the prospection, exploration and production of hydrocarbons)

In the reporting period, a number of draft laws were registered in parliament, including initiatives to improve the production sharing agreements126, criminalization of offenses related to illegal mining, and several initiatives related to the royalties redistribution between the state and local budgets.

The Cabinet of Ministers has improved the procedures for granting special permits for subsoil use (Resolution No.558127), by bringing them into full compliance with the requirements of legislation.

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122 http://www.naftogaz.com/www/3/nakweb.nsf/0/5FAB3FE0598AFB80C22583F200725BEA
126 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_17?pf351f=65410
127 https://www.kmu.gov.ua/ua/npas/pro-unesennya-zmin-do-poryadku-nadannya-specialnih-dozvoliv-t190619
The approved new provisions of the procedure for granting licenses have regulated, in particular, the issues of their re-registration, amendments, and conditions for extending the validity of special permits.

As part of the process of encouraging foreign partners to invest in the gas sector initiated earlier by the government, the State Service for Geology and Mineral Resources has launched a series of open online auctions for the sale of oil and gas exploration permits. For the first round, 3 lots have been proposed in the ProZorro.Sales electronic system; the cost of those lots during online bidding increased from 45 million UAH to about 141 million UAH, i.e. more than 3 times the starting price. According to the agency, over the first 8 months of the year, 6 electronic auctions were held, with exploration rights for 16 oil&gas fields sold.

Although the level of involvement of foreign companies in online auctions is low, the activity is underway to increase the attractiveness for investors: the State Service for Geology and Mineral Resources provides all the opportunities to get acquainted with up-to-date geological information and heads for creating a data storage in Ukraine. The first step towards database integration was made – a memorandum on cooperation with the State Geological Information Fund, the State Service for Geodesy, Cartography and Cadastre, and the Centre of the State Land Cadastre was signed by the State Service for Geology and Mineral Resources. Effective collaboration of these agencies can provide for the synchronization and optimization of work with data of the Land Cadastre and the State Cadastre of Mineral Deposits and Manifestations, which is required by users.

The government has also intensified its efforts to conclude production sharing agreements (PSAs). In July, the Interagency Commission submitted to the government recommendations for winners of 9 onshore fields tendered earlier. According to the Commission proposals, which have been shortly approved by the Cabinet of Ministers (Order No. 507-r), the following entities were selected for corresponding fields:

- JSC Ukrgazvydobuvannia, jointly with Vermilion Ukraine Exploration B.V. – Balakliyska, Ivanivska;
- JSC Ukrgazvydobuvannia – Berestianska and Buzivska;
- Ukraine Energy LLC – Varvynska;
- Oil&Gas Overseas Trading B.V., jointly with LLC Naftogazekspluatatsia – Zinkivska;
- PJSC Ukraftoburinnya – Rusanivska;
- LLC Geo Alliance Partnerstvo, jointly with Geo Alliance Partnership B.V. – Sofiyivska;
- LLC Well Co. – Ugnivska.

It was also reported that, over the next 5 years, winners of the tenders for conclusion of these PSAs will invest over 430 million USD in exploration. The next step is to start negotiations with investors concerning the PSAs conclusion. Meanwhile, at the beginning of August, three more tenders for the conclusion of these PSAs were launched.
conclusion of PSAs were officially announced\textsuperscript{137} - for the fields Hruivska (1108 km\textsuperscript{2}), Okhtyrska (717 km\textsuperscript{2}) and Ichnianska (2478 km\textsuperscript{2})\textsuperscript{138}. The minimum amount of investments is, respectively, 500 million UAH for the first two fields and 900 million UAH for the third one.

In September, the President Volodymyr Zelenskyi instructed to prepare new lots for oil\&gas auctions in 2020\textsuperscript{139}. According to the mass media, the President instructed the government at the same meeting to negotiate and to conclude by December 1, 2019, production sharing agreements for already accomplished tenders\textsuperscript{140}.

However, the government decision to hold a PSA tender\textsuperscript{141} for Delfin offshore field in the northwest Black Sea (9 772 km\textsuperscript{2}) was cancelled (CMU Resolution No.864\textsuperscript{142}) “due to the non-compliance of the tender procedure with the European Union practices”. Illia Ponomarev, one of the shareholders and CEO of Trident Acquisitions, which was earlier recognized as winner of the tender, did not exclude this decision to be appealed in court\textsuperscript{143}. From the viewpoint of the Association of Gas Producers\textsuperscript{144}, the tender was held with numerous deficiencies (the most important of them is an extremely tight schedule – only 2 months), in the absence of which more bids could have been filed and “the offers would have been much more favourable for the state”.

Meanwhile, the government program to increase gas production has not been implemented. According to the Prime Minister Volodymyr Groysman\textsuperscript{145}, the main reasons are the technological backlog of Naftogaz from private companies and its monopoly position. However, Naftogaz points to other factors\textsuperscript{146}: failure by Ukrgazvydobuvannia to approve the sufficient number of new licenses\textsuperscript{147}, the insufficient financing of the required investments. In June, Ukrgazvydobuvannia has presented an updated strategy for hydrocarbons exploration and production that focuses on optimizing investments to support the basic production, infrastructure development and operation of the most efficient wells. Instead, in August the Cabinet of Ministers approved a decision to attract the 51.85 million EUR EBRD loan by JSC Ukrgazvydobuvannia (Order No.664-r\textsuperscript{148}) – against the government guarantee, with the purpose of ensuring an increase in gas production.

**Conclusion:**

Ukraine has made some progress in implementing competitive procedures for the provision of subsoil use rights - through the launch of electronic auctions and tenders for conclusion of PSAs. More efforts should be made to deregulate and attract foreign investors, as the Ukrainian companies are mostly involved in the procedures. At the same time, there is a need to revise the concept of incentives to gas production industry.

\textsuperscript{137} http://mpe.kmu.gov.ua/minugol/control/publish/article?art_id=245388585
\textsuperscript{138} To implement the CMU Resolutions No. 1178, 1181, 1185
\textsuperscript{139} https://biz censor.net.net/n3145944
\textsuperscript{140} https://interfax.com.ua/news/economic/610685.html
\textsuperscript{141} https://www.kmu.gov.ua/npas/pro-provedennya-konkursu-na-ukladennya-ugodi-pro-rozpodil-vuglevodniv-yaki-vioduvatimutsya-u-mezhah-dilyanki-delfin
\textsuperscript{142} https://www.kmu.gov.ua/ua/npas/pro-vizannya-takoyu-shcho-vtrat-a864
\textsuperscript{143} https://www.facebook.com/iponomarev/posts/10157621084140802
\textsuperscript{144} http://agpu.org.ua/news/konkurs-na-dilyanku-delfin-mizhvidomcha-komisiya-zaproponuvala-peremozhchya-.htm
\textsuperscript{145} https://economics.unian.ua/energetics/10460352-groysman-zayaviv-pro-proval-planiv-naftogazu-z-naroshchuvannya-vydobutku-gazu.html
\textsuperscript{146} http://www.naftogaz.com/www/3/nakweb.nsf/0/9380992E2B6183BC22583A100476FIF?OpenDocument&year=2019&month=02&n=t%0D%9D%0D%BE%0D%B2%0D%B8%0D%BD%0D%B8
\textsuperscript{147} In contradiction to that, the State Service for Geology and Mineral Resources claims that over 120 licenses for exploration activities have been issued in 2018 to two biggest Ukrainian state-owned companies: JSC Ukrgazvydobuvannia and PJSC Ukrafta (http://www.geo.gov.ua/derzheonadra-vidali-bilshe-100-specodezvoliv-najbilshim-naftogazovim-kompaniyam/)
\textsuperscript{148} https://www.kmu.gov.ua/ua/npas/pro-zaluchennya-poziki-vid-yevropejs-664r
ELECTRICITY AND NUCLEAR SAFETY

LAUNCH OF A NEW MARKET MODEL

On January 1, 2019, in accordance with the Electricity Market Law, a new model of the retail electricity market was put into operation, and on July 1 - a new model of the wholesale electricity market. In January 2019, Ukrinterenergo, as a supplier of last resort (SoLR) appointed by the Cabinet of Ministers, began to publish information about its consumers. In the first month of operation, in certain regions up to 30-40 industrial consumers were unable to choose a supplier, or had debt for electricity. First and foremost, these were utility companies (water supply companies, heat suppliers) and coal mines.

Later, the situation slightly improved, but the unresolved issue regarding elimination of cross-subsidization between industrial and household consumers, the failure of the Verkhovna Rada to adopt a law on debt restructuring and the delay in testing the software negatively affected opening of the electricity market as a whole, and the SoLR critical financial situation in particular. In the fall of 2019, Ukrinterenergo was on the verge of bankruptcy since it was unable to obtain payment from consumers and pay for the electricity purchased.

A number of decisions were made towards introduction of the new wholesale market. In April, on the basis of the respective branches of Energorynok, the state enterprises Guaranteed Supplier and Market Operator were established. Over time, Market Operator is planned to be re-incorporated as a 100% state-owned joint-stock company. The enterprises were established to ensure public interest and fulfill the guarantees for purchase of all electricity from renewable sources at the feed-in tariff, as well as functioning of the day-ahead and intraday markets.

On June 25, Guaranteed Buyer got the status of a market participant and made preparations for the test operations. Almost 400 producers under feed-in tariff were operating on the market, with whom Guaranteed Buyer entered into contracts for purchasing electricity, offsetting its cost and creating a balancing group.

In turn, on April 26, the NEURC approved a series of regulations on the Guaranteed Buyer activities and purchase of electricity at the feed-in tariff. The regulator also approved the Guidelines for Test Operations in the Electricity Market. Such obligatory operations were to be executed May 1 through July 1, 2019.

In June, the NEURC also amended the Transmission System Code concerning, inter alia, the procedure for interaction between the operator and consumers. Whereas Ukrenergo, being the Transmission System Code’s Administrator, published draft instructions on the schedules of limitation and emergency disconnections of consumers and hourly electricity disconnections.

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149 https://uie.kiev.ua/diyalnist/postachalnyk-elektrychnoi-energiyi-ostannoyi-nadiyi/
150 https://zakon.rada.gov.ua/laws/show/324-2019-%D0%BF
152 http://www.gpee.com.ua/
ya-ta-avarinogo-vidklyuchennya-spozhyvachiv.pdf
In July 2019, following a review of the stakeholders’ suggestions and comments to the Code, Ukrenergo experts developed a draft proposal for changes to the Transmission System Code.\(^{158}\)

Ukrenergo as the TSO has updated the communication interfaces for market participants and network operators, and, for the first time on May 20 announced the participants’ readiness for the new electricity market. At that time, over 205 companies were registered with 60+ producers, 26 DSOs, 23 universal service suppliers (USS). An additional consulting area for the market participants came online.

The companies started testing the software in the bilateral contracts market, in the balancing market segment and in the ancillary services market. Contracts with the producers to resolve imbalances, to provide the electricity transmission services were concluded slowly, and the contracting campaign ended in the last days and hours before the new market set to work causing not only human overload, but also certain technical errors.\(^{160}\)

Despite creation of the necessary regulatory framework and institutions, the expected wholesale market emergence caused concern from both the market participants and some officials. In June 2019, three draft laws were registered proposing to postpone its start, but none was adopted. Some MPs and donor organizations agreed to postpone opening of the market for three months. Instead, the President introduced a draft law proposing to postpone the market launch for a year - until July 1, 2020.\(^{161}\) A few days later, the President submitted another draft law to reduce the electricity cost that addressed regulation of the price for electricity generated at coal-fired power plants, and also proposed postponing the launch of the market for a year due to certain organizational, technical and financial risks.\(^{163}\)

One of the remedies against a sharp rise in prices after opening of the market were the price caps, i.e. marginal prices in the day-ahead and intra-day markets. The restrictions were implemented on June 24 due to the NEURC decision to change the market rules, and should be valid for 9 months.\(^{164}\) Market Operator calculated and published the marginal prices.\(^{165}\) In the assessment, the Energy Community Secretariat mentioned that the stage-by-stage elimination of the mechanism of public service obligations and price restrictions should be a priority for the government and the NEURC.\(^{166}\)

**TRANSMISSION SYSTEM OPERATOR (TSO)**

In March, the Ministry of Finance approved an action plan to reorganize SE NPC Ukrenergo into a private joint-stock company (PrJSC) with 100% of shares belonging to the state. Corporatization of Ukrenergo is a prerequisite to certify the company as an independent TSO. Corporatization includes inventorying the company assets, their independent valuation, review by the State Property Fund of the assets valuation report, as well as other actions required by law.\(^{167}\)

Already in July, the Ministry of Finance announced re-incorporating Ukrenergo into PrJSC, and in October, the NEURC preliminary approved compliance of Ukrenergo with the certification requirements. Final decision shall be made by the end of 2019.\(^{169}\)

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159  https://ua.energy/novyj-rynok-e-e/implementatsiya/
161  http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1/?id=&pf3511=66067
162  http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1/?id=&pf3511=66112
163  As of early October 2019, these draft laws have not been put to the vote
168  https://mof.gov.ua/uk/news/minfin_zavershiv_protses_stvorennia_prat_ukrenergo-1743
On May 17, the NEURC considered the drafts of new Ukrenergo tariffs for the second half of 2019, and proposed to approve the transmission tariff at 0.113 UAH/kWh and the tariff for the dispatching control – 0.008 UAH/kWh. The TSO representatives disagreed, claiming that low tariffs carry significant risks for the new electricity market and could lead the TSO to bankruptcy. The regulator recalculated the TSO costs by including in the tariffs the cost of special obligations (compensation to producers form the renewable energy sources) at 347.43 UAH/MWh (excluding VAT) for the transmission services and 8.90 UAH/MWh (excluding VAT) for the dispatching (operational and technical) control services.

However, as early as July 1, the Kyiv District Administrative Court ruled to secure the claim of Nikopol Ferroalloy Plant JSC and suspended the NEURC regulations setting the tariffs. The defendants promptly filed appeals, but the lawsuits on high transmission and dispatching tariffs continue. The court only partially lifted the ban, leaving the security only for the system users that sued or joined the claim. For more than two months, offices of Ukrenergo and the NEURC have been under the siege of protesters – representatives of the ferroalloy plants demanding to cancel the high tariffs.

As of July 31, Ukrenergo paid Guaranteed Buyer only 30% of the total estimated debt for July 2019 to offset the costs of purchasing RES electricity under feed-in tariff.

From July, the TSO, in compliance with the Market Rules, began publishing a forecast of consumption by the regulatory (trade) zones for each settlement period of the next trading day. Earlier, the regulator agreed on the two separate zones within Ukraine, identified by Ukrenergo – the Burshtyn Energy Island and the United Power System of Ukraine.

### COMMERCIAL METERING

On May 20, 2019, the NEURC published its draft amendments to the Commercial Metering Code (hereinafter referred to as the “Code”). The regulator has developed changes taking into account the remarks of the Antimonopoly Committee and the Ministry of Economic Development and Trade, as well as the feedback of market participants. The changes are related to the following:

- harmonization of the Code with the Electrical Installation Rules;
- use of the metering equipment put into operation prior to adoption of the Code;
- introduction of additional rules concerning metering in the retail market;
- improvement of standards concerning the exchange of information in the market;
- clarification of the rights and obligations of market participants.

On July 9, 2019, the NEURC approved the methodology for calculating payment for the electricity metering services provided by the distribution system operator in the territory of its licensed activity. The sources of financing were determined the payment for the electricity metering services and the electricity distribution tariff.

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171 [http://www.nerc.gov.ua/?id=41556](http://www.nerc.gov.ua/?id=41556)
172 [http://www.nerc.gov.ua/?id=41557](http://www.nerc.gov.ua/?id=41557)
175 [https://ua.energy/diyalnyst/dyspetcherska-informatsiya/prognoz-zagainogo-navantazhennya/](https://ua.energy/diyalnyst/dyspetcherska-informatsiya/prognoz-zagainogo-navantazhennya/)
178 Ibid.
179 [http://www.nerc.gov.ua/?id=42698](http://www.nerc.gov.ua/?id=42698)
Ukrenergo, as the Commercial Metering Administrator, published the guidelines on modelling of the metering data for electricity producers\textsuperscript{180}. It will help the producers not only model the metering data, but also correctly display the volumes of electricity transmission through the networks of generation facilities. The TSO also published the commercial metering data submission formats and the Procedure for Data Processing and Submission\textsuperscript{181}.

In the first days of the new electricity market, market participants reported of the poor commercial metering, but over time, the data quality improved. Ukrenergo assured that the potential imbalances caused by poor commercial metering would be significantly lower than those predicted before the market launch. At the same time, as of the end of July, it was reported that the commercial metering data of small-scale RES generation connected to DSOs networks were not fully available on the Market Management System (MMS) platform\textsuperscript{182}.

**PUBLIC SERVICE OBLIGATIONS (PSO)**

On June 5, the Cabinet of Ministers adopted Resolution No.483 to approve the regulation on imposition of public service obligations on the electricity market participants\textsuperscript{183}. PSO are imposed on electricity producers; universal service suppliers; distribution and transmission system operators. The producers include PrJSC Ukrhydroenerho and NNEG Energoatom who are obliged to sell to USS, DSOs and TSO at the electronic auctions max. 60% of the electricity generated at nuclear power plants, and max. 20% of the electricity generated at hydroelectric power plants\textsuperscript{184}. Over a three-month period, at the proposal of the Ministry of Energy and Coal Industry, it has been decided to hold the electronic auctions at the web-site of the Ukrainian Energy Exchange (UEEX)\textsuperscript{185}. In the future, the UEEX will continue holding electronic auctions.

The NEURC criticized such way of imposing PSO, saying that implementation of the government decision would put an additional burden on the industry and budget of about 37 bn UAH a year\textsuperscript{186}. For its part, the regulator supported the sale of min. 80% of nuclear electricity and min. 50% of hydroelectricity under direct contracts at a fixed price, with the first priority of purchase given to USS (no more than consumed by households), DSOs and TSO, the rest being sold to all other consumers. Instead of the Ukrenergo tariff, the source suggested to compensate the price difference was the additional revenue of Energoatom.

The government partially agreed with the NEURC suggestion and amended PSO regulation – in particular, it provided for sales to Guaranteed Buyer (at the electronic auctions under bilateral contracts, at the marginal price) of 75% of the electricity generated by Energoatom and 20% - by Ukrhydroenerho; another 15% of electricity from Energoatom should be sold to TSO and DSOs\textsuperscript{187}. Guaranteed Buyer shall sell electricity to universal service suppliers and buy it at the Burshtyn Energy Island as a separate market zone.

At the same time, the imperfection of the PSO system appeared in the first months. On July 26, Guaranteed Buyer filed a lawsuit to recover the advance payment from Ukrenergo due to over 1.58

\textsuperscript{181} https://ua.energy/media/pres-tsentr/pres-relizy/pro-nadannya-danyh-komertsijnogo-obliku-postachal-nykamy-poslug-komertsijnogo-obliku/
\textsuperscript{182} https://ua.energy/media/pres-tsentr/pres-relizy/vprovadzhennya-rynkuy-dopomizhnyh-poslug-usune-defitsyt-rezerviv-potuzhnosti/
\textsuperscript{183} https://www.kmu.gov.ua/ua/npas/pro-zatverdzhennya-po-lozhennya-pro-pokladennya-specialnih-obovyaz-kiv-na-uchasnikiv-rinku-t050619
\textsuperscript{184} Ibid.
\textsuperscript{187} https://www.kmu.gov.ua/ua/npas/pro-vnesennya-zmin-do-po-lozhennya-pro-pokladennya-specialnih-obovyazkiv-na-uchasnikiv-rinku-t120619
bn UAH debt for the services to increase a proportion of the electricity generated from renewable energy sources. In August, the government approved a new PSO mechanism. In the transmission tariff, the amount to compensate for the Guaranteed Buyer expenses for purchase of RES electricity under feed-in tariff was significantly reduced. These expenses will be paid by Guaranteed Buyer mostly from its income, and Ukrenergo will only offset part of the expenses.

The Energy Community Secretariat drew attention to the high level of regulation and lack of balance in the market due to the above mechanism, under which a large proportion of electricity was distributed in the way detrimental to competition. However, experts noted that 53% are sold in the free retail market, but the old and not transparent «single-buyer» model should be replaced by a competitive market model.

**CONNECTION TO GRIDS**

In March 2019, in accordance with the requirements of the Distribution Systems Code, the NEURC obliged the DSOs to publish and update on their websites the information on the conditions for connecting to the distribution system, fees, «single window» contact details, information about the power lines and transformer substations.

The new fees for connection are effective since January 22, 2019. For convenience, the regulator developed a calculator to define estimated cost of non-standard connection and updated the calculator to define the standard connection cost.

**BALANCING**

On June 21, Ukrenergo as the TSO reported a threatened situation in the system related to the balance of electricity generation and consumption. This was due to several factors: a record high air temperature and a lack of reserve capacity. On June 24, the system began to work in a balanced way, but the lack of reserve capacity remained critical, as the coal reserves did.

In order to address the issues of balancing and increasing the flexibility of the Ukrainian power system, in July 2019 the Cabinet of Ministers approved the procedure for tenders for construction of new generation capacity and measures for demand response management.

The procedure applies to the business entities that intend to:

- build new generating capacity;
- reconstruct (modernize) an existing generating capacity;
- extend the service life of the nuclear power plant units;
- implement measures of demand response management.

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192 [http://www.nerc.gov.ua/?news=8713](http://www.nerc.gov.ua/?news=8713)
Conclusion:

The legal framework for the new electricity market to function is almost established, and the market itself was launched in a quite regulated mode. The issues of TSO certification and introduction of the ancillary services market remain open. Work is continuing in this direction and is to be completed by the end of the year. The focus should also be made on improving the PSO mechanism and gradual removal of regulatory constraints.

Regulation (EC) 714/2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) 1228/2003 (Articles 270-271, Annex XXVII of the AA)

In January 2019, the Cabinet of Ministers issued an order approving the action plan to synchronize the United Power System of Ukraine (UPS) with the ENTSO-E. The Government believes that this set of organizational and technical measures will improve energy safety, the quality of supply, and create conditions for the synchronization.

On July 10, Ukrenergo signed an agreement with the renowned European TSO Elia Grid International on the provision of consulting services to restructure (re-engineer) the dispatching function and to integrate the energy system of Ukraine with the ENTSO-E. The agreement also provides for the advisory support in adapting the existing UPS rules, codes and guideline to the relevant ENTSO-E documents and regulations, a study with regard to the capacity of interconnectors, and data exchange between UPS and ENTSO-E. Starting in October, practical training will be held at Coreso/TSCnet regional center (Brussels) for the dispatching personnel of Ukrenergo.

On September 18, 2019, the Verkhovna Rada passed a law exempting from the Electricity Market Law the provision that allowed to sell electricity imported from non-parties to the Energy Community only on the day-ahead and balancing markets. That is, now traders can import electricity from Belarus and the Russian Federation under direct contracts, or sell to other market segments without restrictions. Andriy Gerus, chairman of the Verkhovna Rada Committee on Energy and Utility Services, as the author of the law, believes that the amendments are intended to allow imports under direct contracts with Belarus in order to increase competition in the market.

However, there is a de facto increase in imports not only from Belarus but also from Russia, which causes considerable public resonance and registration of a number of legislative initiatives to limit such imports. While the NEURC reported that DTEK Zakhidenergo and related traders in the Burshtyn Energy Island trade zone have violated the law on economic competition in part of blocking imports.

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197 https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=66316
200 http://www.nerc.gov.ua/?news=9490
Conclusion:

The TSO and the NEURC shall monitor export and import in both market zones on an ongoing basis – in order to prevent any abusive activity and artificial deficit.

Data publication on the ENTSO-E Transparency Platform
(Article 278 of the AA)

In June, the Acting CEO of Ukrenergo Vsevolod Kovalchuk and the ENTSO-E Secretary General Laurent Schmitt signed an agreement on the TSO data communication to the Transparency Platform. The document stipulates that Ukrenergo will communicate and update information on power system load, capacity and balancing on the ENTSO-E platform on an ongoing basis. Today, one can find the daily export-import volumes between Ukraine and neighboring EU countries\(^1\) in the system.

Conclusion:

The data exchange on the Transparency Platform is another important step in the way of integrating Ukrenergo with the European network of system operators, and is a prerequisite for all the ENTSO-E members.

Directive 2005/89/EC concerning measures to safeguard security of electricity supply and infrastructure investment (Annex XXVII of the AA)

The Presidential Decree No. 104 of April 4, 2019, instructed the government to take steps to comprehensively support and implement the Ukraine-EU Energy Bridge pilot project. In 2019, the Ministry of Energy and Coal Industry held a competition to identify a private partner for the public-private partnership to implement the project\(^2\), and in August named the winner\(^3\) - Ukraine Power Bridge Company Limited which is a consortium of Westinghouse Electric Sweden AB, Polenergia International S.àr.l., EDF Trading Limited and MVM.

On July 17, Ukrenergo made a statement of intent to develop a DC link, because exports and imports from the EU to the main part of the UPS were technically impossible. Although the scheduled synchronization will take place in 2023, according to TSO, this can be done earlier by creating a 600 MW DC link on the border of the UPS and the Burshtyn Energy Island. The project can be implemented by mid-2020 with the estimated costs of up to 150 million EUR, with fast return of investment even if...

\(^1\) [https://transparency.entsoe.eu/transmission-domain/r2/scheduledCommercialExchangesDayAhead/show?name=&defaultValue=false&viewType=TABLE&amp;areaType=BORDER_CTY&amp;atch=false&amp;dateTime.date-Time=28.09.2019+00:00|CET|DAY&amp;border.values=CTY|10Y1001C--00003F|CTY_CTY;CTY|10Y1001C--00003F|CTY_ CTY|10YHU-MAVIR---U&amp;direction.values=Export&amp;direction.values=Import&amp;dateTime.timezone=CET_CEST&amp;dateTime.timezone_input=CET+(UTC+1)/+CEST+(UTC+2)]
\(^2\) [http://mpe.kmu.gov.ua/minugol/control/publish/article?art_id=245335441]
\(^3\) [http://mpe.kmu.gov.ua/minugol/control/uk/publish/officialcategory?cat_id=245335331]
the link is completed later, in 2022\textsuperscript{204}.

At the same time, TSO spoke critically about the Ukraine-EU Energy Bridge project, referring to some technical and economic constraints\textsuperscript{205}. According to Vsevolod Kovalchuk, Acting CEO of Ukrenergo, the project does not meet the interests of Ukraine as to synchronization with the European system. In his opinion, upon complete synchronization of the UPS with ENTSO-E, Energoatom will be able to conclude a long-term electricity sales contract independently, if there are customers\textsuperscript{206}. In the view of Ukrenergo management, the link can be made by mid-2020, meaning it will be definitely in operation for about one year and a half\textsuperscript{207}.

On August 14, at the government meeting, the Presidential Representative to the Cabinet of Ministers Andriy Gerus requested to suspend the implementation of the Ukraine-EU Energy Bridge project, arguing that the project envisaged allocation of the Khmelnytskyi NPP unit 2 for exports, and thus for losing the relatively inexpensive nuclear generation in the general energy balance\textsuperscript{208}.

Therefore, as of this writing, no negotiations on a partnership agreement with regard to the Ukraine-EU Energy Bridge project have been entered into, the same as implementation of the project to create a DC link between the United Power System and the Burshtyn Energy Island.

Conclusion:

Ukraine needs to finally identify its priorities in implementing infrastructure projects, thus not only ensuring the reliable electricity supply, but also doing no harm to integration with the ENTSO-E and increasing competition.

Coal market (Article 339 of the AA)

According to the Electricity Market Law, on January 1, 2019, the retail market was liberalized. As a result, many of the state-owned mines that were unable to find a supplier became consumers of the supplier of last resort (SoLR) offering the highest price for electricity in Ukraine. However, because of the financial squeeze, the level of payments for the electricity consumed by these mines remained extremely low.

On January 19, the law on amendments to certain laws of Ukraine on creating conditions for the state support of coal industry entered into force extending until 2022 the ban on bankruptcy and bank accounts blocking of the state-owned coal mining companies\textsuperscript{209}.

As estimated by the Ministry of Energy and Coal Industry, in 2019, the average production cost of the state-owned mines amounts to 4,258 UAH/ton\textsuperscript{210}. This price is much higher than that of the import parity.


\textsuperscript{206} https://expro.com.ua/novini/proekt-energomostukrana-s-ne-vdpovda-nteresam-ukrani-v-chastin-sinhronzac-z-entso-e-ukrenergo


\textsuperscript{208} https://expro.com.ua/novini/gerus-zvernuvsya-do-uryadu-z-prohannyam-zupiniti-proekt-energomst-ukrana-s

\textsuperscript{209} https://zakon.rada.gov.ua/laws/show/2658-viii

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– i.e., the cost of coal in the European markets and its delivery to Ukraine. This again demonstrates the deep crisis in the public coal sector and the critical need for its restructuring and reforming.

Regretfully, the related public policy has not been effective in recent years. Privatization of the promising coal companies and liquidation or conservation of the unpromising ones211 determined as the way of solving the public coal sector crisis, remained only on paper - in the Concept for coal industry reform and development by 2020.

Since April 1, 2019, a number of the state-owned mines have been partially disconnected from power supply, resulting in partial suspension of coal production. Water supply and ventilation in the mines were not disconnected from power supply212. This situation occurred because of systematic non-payments for electricity by the state mines. In addition, it has been three months since Ukrinterenergo started supplying; according to the law, SoLR shall supply electricity for a period not exceeding 90 days213.

To prevent any crises related to the interruption of power supply to the state-owned coal enterprises, the Cabinet of Ministers allowed Ukrinterenergo to supply electricity to its customers after April 1214. However, it has become standard practice to periodically partially leave mines without electricity, as the public coal sector remains a major debtor for the electricity consumed.

On July 5, 2019, the Government adopted Resolution No. 570215, which recommended that SoLR shall conclude contracts for electricity supply with all state-owned coal mines at market prices, provided that, as of July 1, 2019, they had no contracts with another supplier. This decision created grounds for the state-owned mines having debts not to be left without electricity supply.

Because of the wage arrears, the employees of state-owned mines systematically protested throughout the year. The protesters refused to rise from mining shafts, went on hunger strike, blocked road traffic, and held rallies at the buildings of the Ministry of Energy and Coal Industry, and the Verkhovna Rada. In response, the government and the parliament time after time decided to allocate or divert funds from the budget. Thus, the funds earmarked for the structural reforms were again spent to settle the arrears.

**Conclusion:**

As a result of insufficient funding of the industry and the lack of successful measures to eliminate the unprofitable coal-mining and coal refining companies, as well as to restructure the economy of coal mining regions, the public coal sector is in decline.

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The purpose of the law is to harmonize the Ukrainian legislation with the European requirements and standards in the field of nuclear energy use, to establish common basic safety standards for the protection of health of personnel under occupational or medical radiation, and of the population against the dangers arising from ionizing radiation. The law regulates the issues of nuclear and radiation safety in terms of reducing the risks of long-term exposure to radon products, radiation protection during medical radiation, and improves regulation of the activities in extraction and processing of uranium ores (in particular, introduces licensing of processing uranium ores taking due account of the uranium concentrate manufacturing cycle).

The Cabinet of Ministers has withdrawn the draft law No. 8348 on amendments to the Law «On Permitting Activities in the Field of Nuclear Energy»\(^\text{217}\). The purpose of the document was to optimize and improve the procedure for issuing permits to carry out activities in the field of using nuclear energy\(^\text{218}\).

In accordance with Article 5 of the Directive, the government must guarantee effective independence from undue influence of the competent regulatory authority in its regulatory decisions. In order to comply with these provisions, Ukraine has undertaken to strengthen the independence and institutional capacity of the regulatory authority. In accordance with the plan for implementing Council Directive 2014/87/Euratom, approved in 2015, it was scheduled to adopt a law on the regulatory authority for nuclear safety\(^\text{219}\) by 2017. However, this did not happen. Currently, such regulation is set by Section 4 of the Law «On Nuclear Energy Use and Radiation Safety»\(^\text{220}\). Accordingly, the Cabinet of Ministers resolution\(^\text{221}\) on amending the Procedure of the State Nuclear Regulatory Inspectorate (SNRI), in order to bring its status and powers into compliance with such law, was not adopted as well.

In addition, to implement the Directive, in 2015-2017 it was planned to develop a single glossary of terms in the field of nuclear installations safety\(^\text{222}\). The glossary has been developed and posted on the SNRI official website\(^\text{223}\).

\(^{216}\) [https://zakon.rada.gov.ua/laws/show/107-ix](https://zakon.rada.gov.ua/laws/show/107-ix)


\(^{218}\) [http://w1.c1.rada.gov.ua/pls/webproc4_1?pf3511=63982](http://w1.c1.rada.gov.ua/pls/webproc4_1?pf3511=63982)


\(^{220}\) [http://zakon.rada.gov.ua/rada/show/39/95-%D0%B2%D1%80](http://zakon.rada.gov.ua/rada/show/39/95-%D0%B2%D1%80)


\(^{222}\) Ibid.

\(^{223}\) [http://www.snrn.gov.ua/nuclear/uk/publish/article/56568](http://www.snrn.gov.ua/nuclear/uk/publish/article/56568)
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Conclusion:

Despite the fact that the deadlines for implementing the Directive have already expired in 2017, some progress is noted, such as adoption of the Law No. 107-IX «On Amendments to Certain Laws of Ukraine in the Field of Using Nuclear Energy».


The plan for implementing Council Directive 2013/59/Euratom included the intention to develop a national action plan (national target program) to reduce the risks of long-term exposure to radon products225 by 2016. To fulfill the plan, in August 2019, the Ministry of Healthcare published a draft of the Cabinet of Ministers act approving the action plan to reduce exposure of the population to radon and its decays, to minimize the long-term risks of radon spreading in residential and non-residential buildings, and at work places for 2020-2024226.

Conclusion:

Despite the fact that the deadlines for implementing the Directive have already expired in 2018, some positive dynamics is noted such as adoption of the Law No. 107-IX «On Amendments to Certain Laws of Ukraine in the Field of Using Nuclear Energy» and development of the action plan to reduce exposure of the population to radon and its decays.


On October 17, 2019, the Verkhovna Rada adopted the law on amendments to certain laws of Ukraine on improving legislation on radioactive waste management227. The purpose of the law is to bring the relevant legislative framework of Ukraine in line with the international safety requirements in terms of improving the system of radioactive waste classification for disposal, which is primarily based on the long-term safety considerations and methods of final disposal.

224 https://zakon.rada.gov.ua/laws/show/107-ix
225 http://www.snrc.gov.ua/nuclear/uk/publish/article/272141;
226 https://moz.gov.ua/article/public-discussions-archive/proekt-akta-kabinetu-ministriv-ukraini-pro-zatverdzhennja-pla-
nu-zahodiv-schodo-znizhennja-ivnja-oprominenennja-naselenennja-radonom-ta-produktami-jogo-rozpadu
227 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?p=3511-66539
On August 21, 2019, the government adopted Resolution No. 759\footnote{https://zakon.rada.gov.ua/laws/show/759-2019-%D0%BF} to amend the procedure for issuing permits for international transportation of radioactive materials in order to coordinate transportation of radioactive waste (RAW) and spent nuclear fuel (SNF) between Ukraine and the EU member states. Establishing a procedure for coordinating the transportation of RAW and SNF with the competent authorities of the countries of origin, destination and transit will facilitate the supervision and control over such transportation to ensure adequate protection of the population and the environment.

The State Nuclear Regulatory Inspectorate developed a draft law to amend the Law «On Nuclear Energy Use and Radiation Safety» in terms of radiation protection experts\footnote{http://www.snrc.gov.ua/nuclear/doccatalog/document?id=421143}. The document provides for the practice of radiation protection experts to advise the entities, engaged in nuclear energy use, on compliance with the requirements of legislation on nuclear and radiation safety. The draft law also provides for approval by the Cabinet of Ministers of the procedure for recognizing the competence of such experts\footnote{http://www.snrc.gov.ua/nuclear/doccatalog/document?id=421145}.

**Conclusion:**

Despite the fact that the deadlines for implementing the Directive have already expired in 2017, significant progress is noted, as adoption of the Law «On Amendments to Certain Laws of Ukraine on Improving Legislation on Radioactive Waste Management», amendments to the procedure for issuing permits for international RAW transportation, and drafting a law on radiological safety expert assessment.

**Cooperation in the nuclear sector (Article 342 of the AA)**

On April 4, 2019, the Presidential Decree No. 104 «On Measures to Support the Development of Nuclear Energy and Improve Safety in Nuclear Energy» was published. The purpose is to enhance the level of nuclear and radiation safety, to ensure sustainable functioning and further development of nuclear energy, and proper fulfillment of Ukraine’s international obligations in the field of nuclear energy\footnote{https://www.president.gov.ua/documents/1042019-26402}. According to the decree, the government had to immediately submit to the Verkhovna Rada a draft law regarding the location, design and construction of the Khmelnytskyi NPP units 3 and 4, and a number of other drafts within 2 months.

Meanwhile, on June 10, 2019, a partnership agreement between Energoatom, the State Scientific and Technology Center for Nuclear and Radiation Safety, and Holtec International was signed. The agreement envisages creation of an international consortium aimed at promoting implementation of SMR-160 small modular reactor technology in Ukraine.

The consortium will analyze the regulatory documents and conceptual design of SMR-160 unit, prepare the output data required for the feasibility study, assess the SMR-160 project in accordance with the IAEA methodology NP-T-1.10 for assessment of nuclear reactor technologies, and develop documents to make a decision on introducing the SMR-160 technology in Ukraine\footnote{http://www.atom.gov.ua/ua/press_centr-19/novini_kompanii-20/p/energoatom_dntc_arb_ta_holtec_international_pidpisali_ugodu_pro_partnerstvo_aka_peredbacae_stvorena_miznarodnogo_konsorciumu-45069}. With regard to continuing operation of the Ukrainian NPPs, the SNRI representatives checked the
Electricity and Nuclear Safety

status of measures implemented at the Khmelnitskiy NPP unit 1. On July 18, 2019, at the meeting of the SNRI Board, the expert findings on the nuclear and radiation safety of the report on the periodic safety reassessment was approved, and the date of next periodic reassessment - December 13, 2028 - was set. At the same time, after more than 260 days of repair, during the start-up operations at the Khmelnitskiy NPP unit 1, failures of the generator auxiliary systems, hydrogen and water cooling systems, and increased vibration speed at the turbo generator bearings were detected, and the test was stopped. The unit is expected to be repaired by the end of 2019.

On August 27, a program for modernization of the Ukrainian NPPs equipment for 2020-2024 was signed between NNEGC Energoatom and JSC Turboatom. It is expected that the modernization will increase the turbines capacity and efficiency and solve other technical problems, and in general, will increase the capacity and efficiency of Ukrainian NPPs by 10%.

Conclusion:

Throughout the year, Ukraine has advanced in implementing the regulatory requirements based on the EU legislation and practice. A number of various inspections and other events involving international partners and business entities were held with advantage. Successful cooperation in the civil nuclear sector confirms the high level of nuclear safety and compliance of Energoatom to all the IAEA standards.

Cooperation in solving problems arising from the Chornobyl disaster, as well as decommissioning of the Chornobyl NPP (Article 342 of the AA)

On January 1, 2019, the Law «On Amendments to the National Program of Decommissioning of the Chornobyl Nuclear Power Plant and Transforming the Shelter Facility into an Environmentally Safe System» came into force. The law extends the program for decommissioning the ChNPP and transforming the Shelter facility until 2020, and defines measures to be taken to permanently close and deactivate the power units. In the next two years, almost 3 bn UAH shall be spent on the program.

On January 16, integrated tests of the radiation control system of the New Safe Confinement (NSC) began at the Chornobyl NPP site. In January, ChNPP received a permit to operate the NSC enclosure based on the results of the state nuclear and radiation safety examination, as well as the SNRI inspection. On April 22, the structure was put into the trial operation mode, and on July 10, the NSC was put into operation and formally handed over to Ukraine. This world’s largest mobile metal structure is the result of 22 years of planning and construction, as well as the tremendous efforts of

233 http://www.atom.gov.ua/ua/press_centr-19/novini_kompanii-20/p/kolegia_derzatomreguluvanna_prodovzilia_termin_ekspluatatsii_energobloka_no1_hmel_nic_koi_aes_na_10_rokiv-45193
236 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=62101
Ukraine and the international community\textsuperscript{238}. Approximately 1.5 bn EUR was spent on the project. The NSC is expected to be operational for at least 100 years\textsuperscript{239}.

In April 4, 2019, the Presidential Decree No. 104 «On Measures to Support the Development of Nuclear Energy and Improve Safety in Nuclear Energy» was published. According to the decree, the Cabinet of Ministers was instructed to take measures to ensure adequate financing of construction of the storage facilities and the infrastructure necessary for the long-term storage of the high-level RAW from processing of spent nuclear fuel and RAW of other NPPs, followed by their disposal.

Also, in 2019, a liquid RAW treatment plant was put into operation at the Chornobyl NPP site. Its designed daily capacity is 42 barrels (200 litres each), which is approximately 10,500 barrels a year\textsuperscript{240}.

On July 10, 2019, the President signed a Decree «On Certain Issues of the Development of Territories Affected by Radioactive Contamination as a Result of the Chornobyl Disasters»\textsuperscript{241}. The document provides, in particular, for developing and approving a strategy for the Chornobyl Exclusion Zone development as a tourist attraction. In addition, according to the decree, the new tourist routes will be laid, in particular by the waterway, new checkpoints will be constructed, and the existing ones will be renewed and upgraded. Some restrictions, such as video recording, will also be lifted\textsuperscript{242}.

**Conclusion:**

Due to the long-term cooperation to solve the problems caused by the Chornobyl disaster, the New Safe Confinement was formally commissioned and handed over to Ukraine in 2019. The active work to start up the facilities for RAW processing and SNF storage is underway.

\textsuperscript{238} https://www.facebook.com/EUDelegationUkraine/
\textsuperscript{239} https://hmarochos.kiev.ua/2019/07/10/na-chaes-zapratsyuvav-konfajnment-nad-chetvertym-energoblokom-foto/
\textsuperscript{240} http://dazv.gov.ua/novini-ta-media/vsi-novyny/na-chaes-rozpochav-robotu-zavod-z-pererobki-ridkikh-rav.html
\textsuperscript{241} https://zakon.rada.gov.ua/rada/show/512/2019
\textsuperscript{242} https://www.president.gov.ua/news/glava-derzhavi-pidpisav-ukaz-shodo-rozvitu-chornobilskoyi-z-56321
ENERGY EFFICIENCY AND SOCIAL ISSUES

Implementation of a key EU energy legislation instrument in Ukraine clearly shows general approach to implementation of the Association Agreement. On the one hand, numerous provisions of the Directive have indeed been transposed in the Ukrainian legislation in the previous periods. E.g., to transpose Articles 9-12, the Law «On Commercial Metering of Thermal Energy and Water Supply» was adopted, Article 20 - the Law «On the Energy Efficiency Fund», and some other provisions were represented in the Law «On Housing and Utility Services», etc.

On the other hand, despite the government assured that adopting the framework Energy Efficiency Law is a priority, and substantial technical assistance was provided by foreign donors and consultants, as of the end of the year the draft law remains neither approved nor even registered in the Verkhovna Rada. The most notable provisions that need to be adopted are the sanctions for violation of energy efficiency legislation (Article 13), imposition of obligations on suppliers to reduce energy consumption (Article 7) and leadership of the public institutions in using only most energy-efficient goods and services (Article 6).

The early elections of MPs to the Verkhovna Rada did not significantly influence the progress, that paused earlier this year at the level of central executive authorities. The draft law was mentioned twice in the Transition Book of the Ministry for Regional Development elaborated by the team of Gennadiy Zubko, the former Vice-Prime Minister, for his successor. Goal 5.1.2 determines that the Ministry, as a further step, shall implement a pilot project and create a representative model for implementing Article 5 «Exemplary Role of Public Bodies’ Buildings» of Directive 2012/27/EU, and goal 5.1.4 – shall create a legislative framework for an effective energy efficiency policy, namely adoption of the Energy Efficiency Law. It remains unclear why Article 5 shall be implemented separately from the rest of the Directive provisions that are currently outside the scope of the Ukrainian legislation.

Amid reorganization in the central executive authorities and transfer of certain functions to new ministries, the draft law will be reconsidered before it can be approved at the Cabinet of Ministers level and submitted to the parliament. This means that one should not expect adoption of the law in the near future.

Among the positive steps, taken in 2019 to partially implement the Directive, is approval by the Cabinet of Ministers in August 2019 of the national energy efficiency target until 2020, which is broadly in line with other strategic sectoral acts - the Energy Strategy by to 2035 and the National Energy Efficiency Action Plan by 2020. The national target envisages a 20% reduction in the final energy consumption in 2020 compared to the baseline scenario. It determines, in particular, following indicators: primary energy consumption shall not exceed 101,316 ktoe, and the final energy consumption shall not exceed 55,507 ktoe.

METERING (ARTICLE 9)

The process of development and adoption of the entire package of by-laws aimed at implementing the Law «On Commercial Metering of Thermal Energy and Water Supply» was extremely slow and substantially later than the deadlines set by the law. Only at the end of February 2019, by its last order, the Ministry for Regional Development approved the methodology of distribution among consumers.

of the utilities consumed in a building\textsuperscript{245}. The long-lasting period of its approval can be explained by the need to take into account the interests of numerous stakeholders in the utilities sector, including residents of multi-apartment buildings.

The primary goal achieved by this order was to establish the principle for calculating and distributing unbalanced consumption, namely, the difference between the consumption of water and heating, measured by the whole-building meters, and the total readings of the individual metering. In other words, the implemented method allows to fairly distribute among residents of a multi-apartment building the cost of maintenance and heating of public places, to ensure functioning of the internal heating and hot water systems, etc. The rule that rests full responsibility for imbalances on the consumers having no individual metering is evidently intended to promote the installation of meters as soon as possible and has a potential to be effective.

Overall, despite the clear and unambiguous purpose of the law to achieve 100\% of commercial metering, as of the end of September 2019, 79.3\% of residential buildings and 78.2\% of non-residential ones were equipped with metering units for thermal energy and, respectively 16.4\% and 52.5\% - with hot water meters\textsuperscript{246}. Considering a monthly increment dynamics, growth of indicators can be considered insignificant and unsatisfactory in any case. As the State Agency for Energy Efficiency experts note in their monthly monitoring reports, postponing until August 2020 of fines for violation of the law makes it impossible to take measures against the external engineering network operators to force them to equip all buildings with thermal energy and water metering units.

Another difficulty was the practice to disclose information of the State Agency for Energy Efficiency, which is responsible for receiving data from the local governments, their processing and publication. Although in general the Agency provides up-to-date information on website\textsuperscript{247}, its experts have implemented the practice to replace data for the previous monitoring period with up-to-date information. This is not optimal approach to publishing data and, although the relevant monitoring methodology does not explicitly provide for keeping the historical information, the Agency is still advised to provide access to data for the past periods.

Starting from February 2019, on the basis of such information, the Agency sends to the State Service on Food Safety and Consumer Protection notifications of violation of the law requirements regarding the terms to install or replace metering units. The number of such notifications has grown steadily, and while in February 2019 - 785 such notifications were sent, two times as many in September 2019 - 1 473\textsuperscript{248}.

**ENERGY AUDITS AND ENERGY MANAGEMENT SYSTEMS (ARTICLE 8)**

Developing and implementing energy management systems, conducting initial and periodic energy audits is perhaps the most important step in raising awareness of energy consumption, and is therefore a prerequisite for the large-scale energy efficiency measures. Against this background, the legislative and regulatory environment created in Ukraine seems to be insufficiently ambitious.

A key act aimed at developing this area is the Cabinet of Ministers Resolution No.723 «On Approval of the Action Plan for Implementation of Energy Management Systems in Budgetary Institutions»\textsuperscript{249}, which has not been amended since April 26, 2017. The plan is also neither implemented in full nor on a regular basis. E.g., one of the procedures (the Procedure for Certification of Energy Management Systems and Energy Managers in Budgetary Institutions), being related to entry into force of the Energy Efficiency Law, was not developed. Other documents were developed by the State Agency for Energy Efficiency and the USAID Municipal Energy Reform project in 2017, but remained non-

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\textsuperscript{245} [https://zakon.rada.gov.ua/laws/show/zt502-18]

\textsuperscript{246} [http://saee.gov.ua/sites/default/files/19.09.20191.rar]

\textsuperscript{247} [http://saee.gov.ua/uk/content/commercial-accounting]

\textsuperscript{248} [http://saee.gov.ua/sites/default/files/19.09.20191.rar]

\textsuperscript{249} [https://zakon.rada.gov.ua/laws/show/732-2017-%D1%80]
The rest of the provisions refer to the information support, for example:

- creation and maintenance of an open database of operational and energy qualities of the budgetary institutions’ buildings;
- provision of information on rating of the budgetary institutions’ activities in the field of energy efficiency and measures, the experience of technical and organizational decision-making regarding energy efficiency, reduction of energy consumption;
- facilitation of the activities (seminars, trainings, etc.) on implementing energy management systems in budgetary institutions;
- promotion of the implementation of energy management systems in budgetary institutions and facilitation of their certification.

To the extent possible, the responsible authorities (the Ministry for Regional Development, and the State Agency for Energy Efficiency) fulfilled the tasks assigned to them by order No.372. In particular, in the previous reporting periods, a list of the companies rendering services on energy audit, energy service and energy management\(^{251}\) was made, as well as a list of the certified experts\(^{252}\). As at the end of the reporting period, these lists contained information about 97 such companies and 90 experts, respectively. In general, significant changes in this direction are noted.

A positive aspect is active cooperation of the State Agency for Energy Efficiency with international technical assistance projects to carry out educational activities on the successful projects in different regions and to promote monitoring. In 2019, representatives of the relevant authority in charge, with the support of international donors, held a series of seminars on the benefits of implementing energy management systems and energy audits in the buildings of social institutions\(^{253}\).

In addition, as a result of fruitful cooperation between the State Agency for Energy Efficiency and higher education institutions, as of September 2019, certification commissions were formed at 42 higher education institutions and self-regulatory organizations to certify the buildings energy performance and to inspect their engineering systems. With 44 higher education institutions, the Agency signed voluntary cooperation agreements to coordinate actions and provide guidance\(^{254}\).

**ENERGY SERVICE MARKET (ARTICLE 18)**

The energy service market may be considered the most successful one. In general, the development of this area depends largely on the increased investors confidence in protecting their investments and guaranteeing cash flow. That is the purpose of the two draft laws registered in the Verkhovna Rada of previous convocation in December 2017: amending the Law «On Introduction of New Investment Opportunities, Guaranteeing the Rights and Legitimate Interests of Business Entities for Large-Scale Energy Renovation»\(^{255}\) and amending the Budget Code with regard to additional regulation of introducing new investment opportunities, guaranteeing the rights and legitimate interests of the business entities for the large-scale energy renovation (by energy service mechanism)\(^{256}\).

Regretfully, on August 29, both draft laws were withdrawn due to the fact they had not yet been considered at the time when the Verkhovna Rada of new convocation started activity. Thus, the energy service development in Ukraine will not be accelerated in the near future.

However, in 2019, new ESCO contract formats became widely known. These include energy service

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253 https://sae.gov.ua/uk/business/energetichny-audit-ta-manadzhment
254 http://sae.gov.ua/uk/content/commissions
255 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=65109
256 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_2?pf3516=9387&ski=9
contracts with an enhanced partnership that provide customer co-financing of complex energy-efficient activities and a larger proportion of savings to the benefit of an investor. The investor’s share under such enhanced partnership contracts can reach up to 75% of savings in monetary terms until the return of investments257. Although in general the investor will receive the same amount as under a typical contract, a larger proportion of savings remaining to the investor will reduce its risks since the investments are repaid in shorter time.

Significant risks related to investing in the energy renovation of budgetary institutions, with financing depending entirely on the budget process and decisions of the authorities, are forcing to look for the new formats for wider application of the ESCO mechanism in the residential and public sectors. Such tools include introduction of an energy service factoring model, with a mechanism developed with support of the UNDP project on energy service development in Ukraine, the Ukrainian Association of Energy Service Companies, banks and insurance companies258.

The new contract design aims not only to facilitate access to loans, but also to create remedies for investors in the absence or inability to pledge real property, as it provides for the mechanisms to return investments by future cash flows on the energy renovated facility side. Involvement of bank as a party also increases the level of investor protection.

Another novelty in this area is the ‘ESCO plus energy management’ model259. Because of slow pace in implementing energy management and energy monitoring in budgetary institutions, experts from the State Agency for Energy Efficiency together with the partner projects have developed an efficient energy management model. It is envisaged that, in framework of a service contract, ESCO investor will also ensure the implementation of energy management or its elements in a budgetary institution. In turn, the institution will significantly reduce energy consumption and thus, having savings, will be able to return the investments and the investor’s return sooner. According to the expert estimates, the average annual savings will be 8-10%260.

As of the end of September 2019, this cooperation model was implemented at a single investment facility in the city of Severodonetsk.

With the support of international technical assistance projects, the government agency in charge also actively continued its educational outreach and advisory work throughout the year to increase the number of ESCO contracts awarded. The database of prospective ESCOs was also updated and, as of the end of September, includes 3,833 investment facilities among 32 central executive authorities that provided relevant information261. The Agency has also stepped up the activity to promote introduction of ESCO mechanism in the residential sector, where energy efficiency measures can be implemented by Ukrainian and foreign companies at their own or borrowed costs under an energy service contract. For now, over 100 housing associations are prospective targets for ESCO. In total, 333 contracts have been concluded since 2016 with 103 of them since the beginning of 2019262.

**NATIONAL ENERGY EFFICIENCY FUND, FINANCING AND TECHNICAL SUPPORT (ARTICLE 20)**

Financing the large-scale housing renovation programs is considered to be one of the most powerful factors in achieving actual reduction in energy consumption. In Ukraine, given significant deterioration and predominantly poor condition of residential buildings, the need for such financing is particularly urgent.

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257 https://enefcities.org.ua/upload/files/%D0%BD%D0%BE%D1%80%D0%B2%D0%BD%D0%B6%D1%81%D1%8C%D0%BA%D0%BE%D0%B8%D0%B9.pdf
258 https://saee.gov.ua/uk/news/3024
259 https://kyivcity.gov.ua/news/kiv_pratsyuye_nad_vprovadzhennym_novo_modeli_energoservisu_esko-energomenedzhment/
261 https://saee.gov.ua/sites/default/files/baza%20investoriv.xlsx
If at the end of 2018, the Fund was rather virtual (although it had almost full set of backing and statutory documents, as well as a quorum of the Supervisory Board), in March 2019 the First Swallows test program was launched, and in September, the Energy Efficiency Fund started receiving applications for a full-fledged «Energodim» program to finance energy efficiency measures for housing associations.

Although the Energy Efficiency Fund actually started its operations only at the end of 2019, in 2018 and 2019, 1.6 billion UAH was allocated for its financing from the State Budget. The same amount is allowed for in the state budget for 2020. In addition, the same amount was provided by the multi-donor fund, primarily at the expense of the EU and German government. Therefore, with the exception of 480 million UAH diverted over these years from the Fund’s funding to support the «warm loans» program, in 2020 the Energy Efficiency Fund will have at least 7.3 billion UAH at its disposal. Though against the background of the annual public funding for the energy efficiency measures at the level of 2 billion UAH, this amount looks significant, but experts estimate the public annual expenditures should be 10 times higher and be allocated at least in the next 10 years.

As part of the First Swallows test program, 15 housing associations were able to test the effectiveness and convenience of applicable procedures with the Fund. Besides, in 1Q2019, the Ministry for Regional Development and the Fund’s management bodies carried out the necessary organizational works: additionally staffed the Supervisory Board, adopted the grant policy, launched the web-site, and ran competitions for the positions in the Fund’s management. In August, complete development of the Energy Renovation Support Program (“Energodim”) for the multi-apartment buildings was announced. Formally, the program was launched on September 3 to continue through December 31, 2023.

Despite the Fund’s assurances of learning from the experience of the First Swallows program, there is criticism in the expert community about duration of procedures envisaged by the program, that may adversely affect the initial level of trust by housing associations.

In general, the history of the Fund’s launch in 2019 confirmed the previous trend of overly optimistic timeframes, since back in February Gennadiy Zubko, the Vice-Prime Minister, estimated that the institution would actually start operating in 1Q2019, and in fact, the applications for grants were accepted strating from September only. At the same time, the Energy Efficiency Fund action program was reviewed and approved with the assistance of Reanimation Reforms Package experts, representatives of housing associations, local governments and amalgamated territorial communities; therefore, in a more inclusive manner than, for example, the development and adoption of many of the statutory instruments to implement the «energy efficiency legislation package» last year, which in fact means fulfillment of the recommendations of the previous annual report.

On the other hand, the lengthy process of developing and agreeing with international donors of the Fund’s action program (in terms of granting funds to housing associations) has become an obstacle to start financing the energy efficiency measures. Funds from the state budget and donors, provided for such activities, will not actually be spent in 2019 and will remain in the current accounts. This is due to the fact that, in accordance with the applicable procedures of the Energodim program, for a housing association to be compensated by the Fund, it is necessary to approve a project, implement it, and carry out an audit – which takes up to several months. Therefore, even the first applicants will not be able to get compensation before the end of 2019. At the same time, the «warm loans» program, as the only financial incentive for households to implement energy efficiency measures, currently available in Ukraine, remains chronically underfunded. As in the previous years, only 400 million UAH was

263  https://zakon.rada.gov.ua/laws/show/2246-19/ed20181013
264  https://zakon.rada.gov.ua/laws/show/2696-19
267  https://reefund.org.ua/programa-energodim
269  https://www.facebook.com/tveosbb/videos/2188283568089951/
traditionally allotted for implementation of the program; that was sufficient just for the first few months of a year.\(^\text{271}\). Due to the active position of the public, in August 2019, 380 million UAH was additionally allocated by the Cabinet of Ministers. In the whole period of the program (since October 2014), over 2.6 billion UAH of co-financing under the «warm loans» program was provided by the state.\(^\text{272}\).

**Conclusion:**

Some crucial provisions of the Directive have not yet been included in the specific legislative acts. Therefore, the legislation of Ukraine lacks tools that would ensure more systematic measures in energy efficiency. Given the structural and staff changes in the government, as well as the declared priorities of the new united ministry, one should expect no rapid progress. In terms of implementation, Ukraine generally continues the course set in the previous periods. In particular, the state agency in charge, in cooperation with international organizations and projects, has been actively campaigning for the promotion of energy service, energy audits and implementation of energy monitoring systems. The state «warm loans» program, as in the previous years, is chronically underfunded. As to the greatest achievements, this year we can mention start of real operations of the Energy Efficiency Fund and determination of the national energy efficiency target for the period up to 2020.

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

As of early 2019, we outline three areas for the implementation of Directive 2010/31/EU: by-laws finalization, improvement of existing legislation (amending the Law “On Energy Performance of Buildings”), and actual training of qualified energy auditors and experts for the certification of buildings’ energy performance. In each of these areas, progress was moderate at best.

E.g., of the two draft governmental resolutions to be approved in 2019, only one is adopted - the CMU resolution on amendments to the list of construction works that do not require documents for their performance and upon completion of which the facility does not require commissioning.\(^\text{273}\). The draft resolution on approval of the procedure for acquisition of a self-regulatory organization in the field of energy efficiency and the model statute for a self-regulatory organization in the field of energy efficiency,\(^\text{274}\), despite being drafted and published for discussion in October 2017, remain non-adopted. This is likely to be the result of the government intention to unify its approach to establishing a cross-sectoral legal environment for the self-regulatory organizations. Unfortunately, the law drafted by the Ministry of Economic Development and Trade in the end of 2018 has not yet been approved by the Verkhovna Rada, although the concept of reforming the self-regulation institute in Ukraine\(^\text{275}\) provided for completion of the reform by 2019.

No amendments have been made to the Energy Performance of Buildings Law in 2019. Thus, the following goals are of critical importance for wider housing certification in Ukraine:

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\(^{271}\) [https://zakon.rada.gov.ua/laws/show/2696-19](https://zakon.rada.gov.ua/laws/show/2696-19)


\(^{273}\) [https://zakon.rada.gov.ua/laws/show/236-2019-%D0%BF](https://zakon.rada.gov.ua/laws/show/236-2019-%D0%BF)


\(^{275}\) [https://zakon.rada.gov.ua/laws/show/308-2018-%D1%80](https://zakon.rada.gov.ua/laws/show/308-2018-%D1%80)
Energy Efficiency and Social Issues

- introduction of mandatory inspection of the large heating and air-conditioning systems;
- imposition of the obligation to certify apartments and houses for sale or long-term lease.

Neglect of these direct requirements of Directive 2010/31/EU has repeatedly been noted by the Energy Community Secretariat in its assessments as the fact that significantly slows down buildings certification in Ukraine, therefore delaying the complete inventory and assessment of energy renovation on the national level. As of June 2019, 200 buildings were certified for their energy performance.

Somewhat better is the situation with training of the necessary professionals. As of the end of September 2019, the database of certified energy auditors for certification of buildings energy performance included 774 experts, and the database of experts in the engineering systems inspection – 600. It should be separately noted that training of the qualified energy auditors and experts for energy performance certification significantly depends on scaling of the Energy Efficiency Fund activities. Given the potential interest in using the Fund services by housing associations, the lack of trained personnel can significantly limit the number of energy-related renovation projects to be undertaken at a time, since the initial and final energy audit reports are required to be submitted to the partner bank for consideration, which means at least two full inspections.

Among the positive aspects of the law implementation, we can also mention development of the certification software that will allow energy auditors to determine the energy performance of buildings; generate and submit energy certificates to the relevant body. E.g., the State Agency for Energy Efficiency will be able to administer the certificates and energy auditors databases, as well as to verify the certificates quality. The role of international technical assistance in training of coaches for the energy auditors in higher education institutions shall be also noted.

Another important document related to actual energy efficiency improvement in the new construction sector, developed by the Ministry for Regional Development, was the Building Code B.2.2-X:201X “Residential Buildings. Fundamental Principles”, revised, providing for the residential buildings design of at least “C” energy efficiency class. According to the developers, this will save up to 40% of energy consumed by such buildings, and will significantly extend their lifetime if reconstructed.

**Conclusion:**

The government and the parliament have not even started discussing amendment of the framework law, which would extend the obligation to carry out energy certification of most buildings, namely the property for sale or long-term lease. Also, the Cabinet of Ministers could not decide on the approach to creating a favorable environment for self-regulatory organizations in the field of energy certification of buildings. Regarding implementation of the Directive provisions, there has been a steady increase in the number of certified professionals. At the same time, their number may be insufficient when the Energy Efficiency Fund ramps up activity creating higher demand.

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278 [https://saee.gov.ua/uk/news/3011](https://saee.gov.ua/uk/news/3011)
Directive 2010/30/EU on the indication by labeling and standard product information of the consumption of energy and other resources by energy-related products

In 9 months of 2019, implementation of Directive 2010/30/EU has not shown rapid progress. Out of 11 regulations provided for in the Directive, two remained non-approved:

- regulation on labeling of water heaters, accumulator tanks, and sets of a water heater and solar equipment;
- regulation on labeling of space heaters, combined heaters, and sets of a space heater, heat regulator and solar equipment, and sets of a combined heater, heat regulator and solar equipment.

The development of these documents in accordance with the plan for developing technical regulations for 2018-2019, approved by order No. 196 of the Ministry of Economic Development and Trade, was scheduled to 4Q2018. At the beginning of the year, none of these documents were drafted or approved.

However, some progress was noted in 2019: the first regulation was adopted on April 19, 2019, and registered at the Ministry of Justice in June 2019.

A regulation on labeling of air heaters was also developed and published on the website of the State Agency for Energy Efficiency as early as in February 2019. At this writing, the document was not progressing towards adoption.

Conclusion:

The area, traditionally considered to be the one, where the government has made its greatest effort to comprehensively transpose all the requirements, has been showing little progress for the second year in a row. Out of two regulations that are lacking for fulfillment of obligations, both are developed but only one adopted.

Directive 2009/125/EC establishing a framework for the setting of ecodesign requirements for energy-related products

The Directive was to be transposed on the basis of the Cabinet of Ministers Resolution No. 475 of May 14, 2015, and subsequently - in accordance with the action plan of October 25, 2017, for implementing the Association Agreement. The relevant government resolution No. 804 on approval of the regulation on establishing a system for setting the ecodesign requirements for energy-related products was approved on October 3, 2018. Currently, the State Agency for Energy Efficiency continues to develop regulatory acts in the field of ecodesign requirements applicable to transformers, electric motors, industrial fans, lighting devices, circulation and water pumps.

281 https://zakon.rada.gov.ua/rada/show/v0196731-18
282 https://saee.gov.ua/uk/business/tehnichne-reguluvannya/tehnichni-reglamenty
283 http://saee.gov.ua/uk/content/elektromni-consultatsii
284 https://zakon.rada.gov.ua/laws/show/475-2015-%D1%80
286 http://saee.gov.ua/node/157
Among the documents recently adopted by the government are important regulations that will eliminate any energy-inefficient goods from the market, and will help consumers to save on utilities. In particular, the ecodesign regulations for ovens, cooking surfaces and hoods; omnidirectional radiation lamps; dishwashers; water heaters and accumulator tanks; computers and computer servers; fluorescent and discharge lamps; air conditioners; TVs; office equipment and washing machines were adopted.\(^{287}\)

**Conclusion:**

The changes made to Annex XXVII of the Association Agreement, under which the Directive is to be transposed into the Ukrainian legislation, have in fact brought Ukraine’s commitments in line with actual environmental design achievements made earlier.

**Consumers protection (Article 3 of Directives 2009/72/EC and 2009/73/EC)**

In line with the trend of previous year, reforming the social support for most vulnerable consumers of housing and utility services generally appeared to be active, but not always well-designed and efficient. The most intriguing issue was whether the government would be able to fully and efficiently transfer both housing subsidies and benefits into a format where the expenditures were at the consumers’ disposal in reality. As of the end of September 2019, we can say that the government could not implement the model in full, but significant positive progress has been achieved.

From January 1, 2019, a cashless subsidy monetization system\(^{288}\) was launched that was widely criticized and often called “pseudo-monetization”\(^{289,290}\) as funds, even in a cashless form, were automatically transferred from the consumer accounts to suppliers. The Cabinet of Ministers was looking for the ways to change the situation. Obviously, an important factor in this process were the presidential elections, since the decision to launch cash-based subsidy monetization was made in a hurry, at the beginning of election race in mid-January under the auspices of the President.\(^{291}\)

As of the start of 2018-2019 heating season, two parallel systems of housing subsidy payment existed in Ukraine:

1) consumers who were granted a subsidy from the start of a heating season (even if it was actually granted in 2019, with delay) first received a non-monetary subsidy (the funds were transferred on behalf of the consumer directly to service providers), and starting in February (actually paid in March) - in cash or on the bank accounts;

2) consumers who were granted a subsidy from January 2019 or later, had personal accounts opened at Oschadbank, but could not manage their funds and Oschadbank independently transferred the funds to service providers on behalf of such consumers.

As a result, because of several parallel mechanisms for granting subsidies under different regulations, a conflict emerged: the procedure for repayment of savings, defined in the government resolution

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289 https://www.facebook.com/tetyana.boyko/videos/10218589336586688/
290 https://proosbb.info/node/380
No. 534 of August 23, 2016, was not adapted to change in the procedure for paying subsidies in the middle of heating season. Therefore, according to the heating season results, the consumers who received their subsidy in a “pseudo-monetized” form received “saved” subsidies in cash and in full.

Instead, for those consumers who received their subsidy in monetized form, savings from their personal accounts were written off and returned to the state budget. The calculation was made by a special formula, and in many cases, the amount written off the personal accounts exceeded the actual overpayment balance on such accounts, which resulted in a debt on no grounds. However, the situation was remedied later. On July 19, 2019, the necessary changes to the Resolution No. 534 came into force, and the service providers began returning savings to the consumers’ accounts.

It should be noted that the government explained the need for two parallel mechanisms for granting subsidies with the “testing period” necessity. Since the social assistance was provided with no restrictions on the purpose of use, reasonable concerns were raised that a significant part of subsidy recipients would use money other as intended. In the first months, delayed payments, errors in determining the way to receive a subsidy (through UkrPoshta or a bank) and other problems, that resulted in the subsidy not always being received by some consumers on time, were a significant factor affecting the consumer payment discipline. The indicators of late or incomplete payment using monetized subsidies in 1Q2019 were estimated at approximately 25%.

To improve the payment discipline, starting from April 2019, the government introduced a rule under which the debt for utility services over 20 non-taxable minimum incomes (340 UAH) deprives consumers of the right to receive subsidy in the future. Yet by the end of the heating period, the level was over 96%, i.e. much higher than expected.

Therefore, the Cabinet of Ministers has adopted a resolution for cashless monetization to be issued only for the consumers having problems with the payment discipline. All other consumers shall receive subsidies in cash. By default, the cashless form is also applicable to the recipients of benefit, though from October 1, they are able to choose the option of receiving benefits in cash. In order to do this, they need to apply to the respective Labor and Social Protection Department.

Another important process of significant impact on protecting the consumers of energy, housing and utility services was the unjustified charging by regional gas companies for the so-called “adjustment to the standard conditions”. Most gas suppliers sent invoices to consumers with additional coefficients, although – from the government and the NEURC point of view – these coefficients were illegal, since the cost of adjustment was included into the gas distribution tariffs. Although the regulator and the government have repeatedly assured the situation will be resolved, some companies have indeed recalculated the invoiced amounts according to the NEURC instructions, while others continue to apply the coefficients and charge additional fees and penalties threatening with disconnection of gas supply.

The regulator is running a fierce battle in court, but there has been no systematic solution to this problem as of September 2019. As a result, a large number of consumers were denied the right to receive a subsidy or were under risk of losing it. Therefore, the government in a separate resolution stated that a debt related to charging the “temperature coefficients” was not an obstacle to obtaining...
monetary subsidies\textsuperscript{303}. On August 14, 2019, the government significantly simplified the system for receiving subsidies\textsuperscript{304}. Consumers can get a subsidy at one of the banks of their choice. At the same time, one can get monetized benefits at Oschadbank only. In order to optimize the recipients, the relevant authorities will be able to refuse a subsidy on the following grounds: the heating space exceeds 120 sq. m for apartments or 200 sq. m for individual houses, the applicant owns a vehicle manufactured less than 5 years ago, or a recent significant purchase (a land plot or other real estate, etc.) is recorded.

\textbf{Conclusion:}

Monetization of subsidies and benefits has become a potentially important step of the authorities to use public funds, allowed for the social support of vulnerable consumers, to implement the energy efficiency measures. It should be noted, however, that the lack of proper communication support for this process in general and its individual aspects in particular has led to new points of misunderstanding between the government, service providers and consumers. A number of problematic issues related to monetization, in particular as regards its two forms – in cash and cashless (“pseudo-monetization”) - leads to increased tensions and distrust of the authorities, offsetting the very ideology of targeted support. At the same time, we shall note the role of civil society in the persistent demand for monetization of benefits and subsidies, as well as systematic control over formation and implementation of the public policy to take into account the interests of all social groups.

\textsuperscript{303} https://teplo.gov.ua/news/218-sumnivni-borhy-za-haz-ne-vplyvatymut-na-subsydiiu
\textsuperscript{304} https://zakon.rada.gov.ua/laws/show/807-2019-%D0%BF
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) (Article 363 of the AA)

The Directive has been implemented since December 18, 2017, when the Law «On Environmental Impact Assessments»\(^{305}\) came into force. According to the law, the unified environmental impact assessment register\(^{306}\) is maintained.

On July 5, 2019, the Ministry of Environment and Natural Resources released for discussion the draft guidelines for elaborating an environmental impact assessment (EIA) report in the field of forestry\(^{307}\). The guidelines indicate what types of the planned forestry activities shall be assessed for the environmental impact, some special considerations related to determining the time for EIA when planning the forestry activities, as well as the stages of elaborating an EIA report. The guidelines, inter alia, include the requirements to each EIA report section.

On September 11, 2019, the draft law on amendments to certain legislative acts to improve the procedure for provision of administrative services in the construction sector and establishment of the unified state electronic system in the construction sector\(^{308}\) was adopted in the first reading. In accordance with its provisions, amendments to the Law «On Environmental Impact Assessment» shall be made with regard to the EIA register compatibility with the unified state electronic system in the construction sector.

Conclusion:

The process to approximate the Ukrainian legislation to Directive 2011/92/EU has been completed, and the provisions of the Law «On Environmental Impact Assessment» are being applied in practice. In general, the implemented EIA model is pro-European, meets the principal requirements of the Directive, but is too complicated. Information is communicated to the online register on an ongoing basis, but it is too difficult for an average citizen to use it, as large amount of information is not properly systematized.

Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment (Article 363 of the AA)

The Law «On Strategic Environmental Assessment» was put in effect in October 2018. On January 23, 2019, the Cabinet of Ministers adopted the Resolution No.45 «On Amendments to Certain Resolutions of the Cabinet of Ministers of Ukraine»\(^{309}\) to implement the provisions of the law on strategic environmental assessment (SEA). Inter alia, some amendments are made to the procedure for developing the regional programs to protect population from ionizing radiation, to developing forecasting and policy documents of the economic and social development, and drafting the state

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305 https://zakon.rada.gov.ua/laws/show/2059-19
306 http://eia.menr.gov.ua
307 https://menr.gov.ua/files/docs/Proekt/05072019/Proekt_Lis_.pdf
308 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?p351f=66313
309 https://zakon.rada.gov.ua/laws/show/45-2019-%D0%BF
The document includes provisions for public consultations, in particular when drafting the local urban planning documentation. The resolution indicates that the term «public» in the procedure for public consultations has the meaning given in the Law «On Strategic Environmental Assessment», i.e. has a territorial reference. The restriction meets neither Directive 2001/42/EC nor the Aarhus Convention.

**Conclusion:**

The process to approximate the Ukrainian legislation to Directive 2001/42/EC has almost been completed. The framework SEA law is being implemented in practice. The SEA Procedure approved by the law is broadly in line with the Directive requirements, but there are issues with defining the public for SEA purposes and limiting application with regard to the territorial planning. Another problem is finding SEA information and SEA reports, since there is no single register for such information. A concern is that, despite the existing legislation, a number of strategic or policy documents fail to undergo the strategic environmental assessment.


On January 1, 2019, the new State Water Monitoring Procedure came into force, which would help to get more information about the water environment in Ukraine. The new monitoring system provides for the division of responsibilities between the organizations measuring the indicators (without duplication), an expanded list of the biological, hydromorphological, chemical and physicochemical indicators for monitoring, introduction of a six-year monitoring cycle, the water condition classification (5 classes for environmental conditions and 2 classes for chemical conditions), and increasing the number of water monitoring points from hundreds to several thousands.

On May 31, 2019, the Ministry of Environment and Natural Resources, together with the Open Society Foundation, presented the Open Environment geo-information system, which would allow getting all the required environmental information on a single portal. The system is currently operated in a test mode and offers three interactive maps: Water, Air, and Eco-finance. It is also planned to introduce Forests, Biodiversity and Soils modules. The portal will provide not only the public state environmental monitoring data, but also the public monitoring data. Such informational system was envisaged by the concept for creating the national automated Open Environment system, approved in November 2018.

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310 https://zakon.rada.gov.ua/laws/show/758-2018-%D0%BF
311 http://openenvironment.org.ua/index.htm
312 https://zakon.rada.gov.ua/laws/show/825-2018-%D1%80
Conclusion:

Contentwise, implementation of the Directive’s provisions requires no urgent steps, the basic requirements are provided by the Law «On Access to Public Information». In 2019, the focus has mainly been on creating the Open Environment system. Currently, the portal is operated in test mode and covers three modules only: Water, Air and Eco-finance. Therefore, there is still much work to be done in starting other modules and synchronizing them with other informational systems. As of January 1, 2019, the European water monitoring system has come into operation in Ukraine.

Directive 2003/35/EC on public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending Council Directives 85/337/EEC and 96/61/EC with regard to public participation and access to justice (Article 363 of the AA)

The implementation of Directive 2003/35/EC is closely linked to implementation of the Aarhus Convention in Ukraine, in particular the provisions regarding public participation and access to justice, as well as the implementation of Directive 2001/42/EC.

Implementation of the Law «On Strategic Environmental Assessment» started in October 2018, however, as indicated in the relevant section of this report, definition of the term «public» in the procedure for public consultations meets neither Directive 2001/42/EC nor the Aarhus Convention.

Applying restrictions to the definition of public by reference to the place of registration limits the citizens’ constitutional rights and does not contribute to the professional discussion level.

Absence of a single portal to publish information on the documents undergoing the strategic environmental assessment or SEA reports does not contribute to active participation of the public.

Conclusion:

The process to approximate the Directive provisions has practically been completed in regards with adoption of the SEA Law (in the context of public participation). At the same time, the law has a systemic problem related to defining the «public» term. It is too early to speak of the quality of practical implementation of the SEA Law with regard to participation of the public, given that in practice, implementation has just started in October 2018.

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

In 2019, Ukraine is to fully approximate the national legislation to the requirements of Directive 2008/50/EC, but the process has just begun. In January 2019, the Ministry of Environment and Natural Resources published and publicly discussed the draft Government Resolution «Some Issues of State
Monitoring in the Field of Atmospheric Air Protection», and on August 14, 2019, the Government approved a new State Air Monitoring Procedure\(^{313}\).

The procedure provides for the air quality monitoring and management based on the territory zones and agglomeration principle, in particular:

- establishment of zones and agglomerations, with each having a designated air quality management body to coordinate the monitoring and air quality management activities, including preparation and implementation of the air quality improvement plans;
- establishment of the procedure to determine the assessment cycle for each zone and agglomeration depending on the contamination level;
- creation of the informational and analytical system of the data on air quality and timely informing the population;
- determination of the air pollution level indicators, PM 2.5, PM 10 and ozone included in the pollutants list to be monitored mandatorily;
- creation of a new monitoring points network to meet the minimum European monitoring requirements;
- development of a monitoring program for zones and agglomerations every 5 years.

Adoption of the procedure does not speak for the automatic implementation of the European air quality monitoring standards in Ukraine. In order to fully implement the procedure, the ministry in charge shall approve a number of documents (to determine the assessment procedure for each cycle, to develop and approve plans for improving the atmospheric air quality, the short-term action plans, types of the national monitoring programs in the field of atmospheric air, etc.). It will take some time to create new institutions. Equally important is the organizational capacity of the state monitoring entities, in particular to establish the required and sufficient number of the monitoring points. Some monitoring issues are not given due attention, e.g. measurement at the monitoring points in rural areas. The list of zones is actually a reproduction of the administrative and territorial division of Ukraine at the regional (oblast) level, and the list of agglomerations is limited only to the cities with a population of over 250,000 people.

By «agglomeration», the Directive refers to the areas, including suburbs, with a population of over 250,000 people, and envisages inclusion of the areas with a smaller population but taking into account the population density. Therefore, the proposed list of agglomerations is not complete.

In May 2019, the Ministry of Environment and Natural Resources developed and published a draft methodology for calculating compensation for the losses caused to the state as a result of violation of the legislation on the atmospheric air protection\(^{314}\). The project was developed in accordance with the Law “On Protection of Atmospheric Air» and Article 68 of the Law «On Environmental Protection» in order to improve the procedure for determining the damage caused by the excess pollutants emissions into the atmospheric air. The methodology applies to the emissions from stationary sources and does not apply to the emissions from the mobile sources of pollution. It includes formulas to calculate the excess emission volumes and a formula to calculate the amount of losses.

\(^{313}\) https://www.kmu.gov.ua/ua/npas/deyaki-pitannya-zdijsnennya-derzhavnogo-monitoringu-v-galuzi-ohoroni-atmosfer- nogo-povitryam140819

\(^{314}\) https://menr.gov.ua/files/docs/Proekt/30052019/L_%D0%9F%D1%80%D0%BE%D0%B5%D0%BA%D1%82%20 %D0%B0%D0%BA%D1%82%D0%B0%20%D0%BD%D0%B0%D0%BA%D0%B0%D0%B7_%D0%BC%D0%B5%D1%82% D0%BE%D0%B4%D0%B8%D0%BA%D0%B0.pdf
Conclusion:

Adoption by the government of the Air Monitoring Procedure is an important, but insufficient and early step to effective implementation of Directive 2008/50/EC. Implementation of the Directive should begin with amendments to the Law «On Protection of Atmospheric Air» or adoption of a new framework law in this field. Additional statutory instruments, the follow-up revision of the issues regarding creation of zones and agglomerations, as well as financing to establish a new monitoring points network meeting the European standards are required. It takes time to create new institutions – the units that will perform functions of the air quality management bodies, to establish the consultative, advisory and coordination bodies (an interagency commission and commissions on the state monitoring in the field of the atmospheric air protection).

Directive 2009/147/EC on the conservation of wild birds (Article 363 of the AA)

In early 2019, the Ministry of Environment and Natural Resources promulgated the draft Law «On the Areas of the Emerald Network»315. The document, inter alia, states that it establishes the legal basis to determine and save the Emerald Network areas in Ukraine in accordance with the requirements of the Convention on the Conservation of Wild Flora and Fauna and Natural Habitats in Europe (the Berne Convention) and in accordance with the requirements of Directive 2009/147/EC on the conservation of wild birds and Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora. However, the draft law is more focused on implementation of the Berne Convention, to which Ukraine is a party, and cannot ensure proper implementation of the Birds and Habitats Directives. On March 11, 2019, the Ministry of Environment and Natural Resources approved the action plan for protection of the black stork in Ukraine316. Inter alia, it seeks to implement the provisions of the Directive on the conservation of wild birds.

The action plan defines the measures to organize and monitor, to hold environmental and educational activities, to create protective sites in the breeding grounds, to create a network of territories and venues of the nature reserve fund, nature conservation areas of international importance, to arrange artificial nesting sites, to optimize usage of forests in the breeding grounds, and to optimize hydrological regime in the breeding grounds, captive breeding, rehabilitation and release in the wild.

Conclusion:

The drafted Law «On the Areas of the Emerald Network» enacts rather the Berne Convention than Directive 2009/147/EC. It is necessary to pass the legislation that would implement the Directive provisions, in particular with regard to creation of the special protection areas. Other measures, such as the plan for protection of the black stork and expansion of the nature reserve fund, indirectly contribute to implementation of the Directive, but there is a need for a comprehensive law that would, inter alia, provide for the creation of special protection areas.

The National Emissions Reduction Plan for Large Combustion Plants adopted in 2017 and the 2018 action plan for its implementation have not been implemented even in 2019. One of the serious reasons for slowing down the NERP implementation may be the lack of a mechanism to finance the envisaged measures and adopt the necessary by-laws. In June 2019, the Ministry of Energy and Coal Industry initiated amendments to the NERP. The main argument for the changes was the need to adapt the plan to the new electricity market model and the need for the generating companies to make large investments. On July 24, 2019, the Cabinet of Ministers approved the Resolution “On Amendments to Annexes 1-4 of the National Emissions Reduction Plan for Large Combustion Plants”\(^{317}\). The Ministry of Environment and Natural Resources did not support such changes, and the strategic environmental assessment required by law was not carried out.

The resolution provides for amendments to:

- the Annex 3 in terms of enabling the combustion plant operators to change the type of the emission reduction technologies;
- the Annexes 1-4 in terms of updating the company names, years of commissioning and the total thermal capacity as of December 31, 2012;
- the action plan to reduce the emission of pollutants from large coal combustion plants included in the NERP (Annex 3).

Another goal to implement Directive 2010/75/EU is introduction of a single integrated permit in Ukraine. The first step in this direction was approval by the government on May 22, 2019, of the Concept for Realization of the National Industrial Pollution Policy\(^{318}\). Implementation of the Concept should increase the state regulatory efficiency in the field of industrial pollution and improve the system of supervision (control) over compliance by the economic entities with environmental legislation. It is expected that implementation of the Concept shall reduce the pollutant emissions into the air from stationary sources by 22.5% compared to the 2015 emissions.

The Ministry of Environment and Natural Resources also released to the public for discussion the draft action plan on implementation of the Concept for Realization of the National Industrial Pollution Policy\(^{319}\). The action plan contains three blocks: (1) Improving the efficiency of state regulation in the field of industrial pollution; (2) Strengthening and optimizing the institutional capacity and ensuring effective cooperation of the environmental authorities; (3) Improving the system of supervision (control) over compliance by the economic entities with environmental legislation.

One of the main measures serving as the starting point for other related activities is drafting and submission to the Cabinet of Ministers of a law on the integrated prevention, reduction and control of industrial pollution.

The law development is one of the goals of the Best Available Techniques (BAT) for Ukraine project\(^{320}\), being implemented by GIZ GmbH jointly with the Ministry of Environment and Natural Resources and launched on July 7, 2019. In addition to assisting with the legislative framework development, the project is aimed at strengthening the institutional capacity of the Ministry of Environment and Natural Resources, partial translation of BAT, implementation of the pilot projects and development of the

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mechanisms for investing in modernization within the framework of implementing Directive 2010/75/EU on industrial emissions.

**Conclusion:**

Practical implementation of the National Emissions Reduction Plan for Large Combustion Plants has not started yet, and changes only postpone this process. Particular attention should be paid to the financial mechanisms for implementation. An important achievement in 2019 may be considered the approval of the Concept for Realization of the National Industrial Pollution Policy. The immediate task to start implementing this policy is to develop and adopt a law on the integrated pollution prevention, reduction and control. According to the draft action plan for implementation of the Concept, such a draft law is to be submitted to the Verkhovna Rada in 2020.

**Directive 2009/28/EC on the promotion of the use of energy from the renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (Article 338 of the AA)**

Further activity has been carried out in 2019 on introducing the new system for supporting electricity generation from renewable sources. In February 2019, the updated revision of the draft law No. 8449-d has been supported by the members of the Verkhovna Rada Committee on Fuel and Energy; the goal of the draft law is to decrease the price of RES electricity by introducing competition among investors for getting the support.

It is worth mentioning that experts from DiXi Group, the Low Carbon Ukraine project supported by the government of Germany, as well as the EC project «Auctions for Renewable Energy Support» (AURES II) have been involved in the development the draft law. In addition, the IRENA, the EBRD, the Energy Community, the World Bank, and the IFC have been working on the document.

The Law was adopted in April 2019, showing a well-coordinated work of all stakeholders and demonstrating a consensus reached concerning changes in the RES support system. Thereby, the preferential price for RES generation facilities (wind over 5 MW and solar over 1 MW) will be determined on competitive basis, and the projects will be supported for 20 years following the auction. The first pilot auction shall take place before the end of 2019, the last auction before December 31, 2029; the auctions will be held twice a year. The existing support system is also amended by the concerned Law: in particular, the feed-in tariff is decreased from 2020: for solar installations – by 25% and for wind installations – by 10%, with further annual decrease by 2.5% and 1.5% correspondingly in the next 3 years. Quotas for participating in the auctions are expected to be announced by the beginning of December 2019.

Simultaneously, after the Law has been adopted, intense debates have been initiated concerning the amendment on non-application of the feed-in tariff to the household solar installations mounted on the ground. The requirement of being mounted on a façade, a building or a roof appeared to be the new condition required to get the feed-in tariff for household solar installations with less than 50 kW capacity. Moreover, if the initial approach was to apply this amendment only to new market players,

then – according to the wording of the adopted Law – it should have been applied to those who have commissioned their solar systems before.

To resolve this issue, several solutions have been considered, but the draft law filed by a group of MPs\textsuperscript{323} was finally enacted into the law. Already by July 2019, the Verkhovna Rada has adopted amendments to restore the rights of households and to include the energy cooperatives into this group of consumers. All shortcomings concerning application of the feed-in tariff to household solar installations have been eliminated.

Against the background of the law on auction system being adopted, investors have continued to dynamically construct new RES facilities with the goal of having an opportunity to get the feed-in tariff. As informed by the State Agency for Energy Efficiency, over 2.5 GW of new facilities have been commissioned in 9 months of 2019, and over 2 bn USD\textsuperscript{324} have been invested into the sector. Moreover, increase of «green» facilities by almost 1 GW is forecasted by the end of this year.

In summary, the capacity of all commissioned facilities according to the NEURC data can increase by half compared to 2018, and the estimated cost of the RES-generated electricity would double and amount to 28 bn UAH as compared to 14 bn UAH in 2018\textsuperscript{325}. Such situation creates risks for both the wholesale energy market and the system balancing, therefore initiatives to lower the level of feed-in tariffs\textsuperscript{326} have been raised from the authorities. A working group has been created at the Ministry of Energy and Environmental Protection with the representatives of investors, market participants and MPs; this group will work on the sector development issues\textsuperscript{327}.

To respond to risks related to the considerable increase of RES facilities, the respective Verkhovna Rada Committee and the State Agency for Energy Efficiency have intensified their activities related to the use of electricity accumulation systems\textsuperscript{328}. At the same time, the State Agency for Energy Efficiency and the EC have agreed on a work plan under the Twinning project\textsuperscript{329} which will assist in improving the legislation in accordance with the Directive 2009/28/EC requirements and developing the new National Renewable Energy Action Plan for the period until 2030.

As for the transport sector, the Law No. 2754-VIII\textsuperscript{330} concerning electrical vehicles access to the charging stations infrastructure has been adopted in July 2019 with the goal of decarbonisation and development of electrical transport. It is expected that, by implementing this law, the issue of identifying such vehicles, introducing signs on the charging stations and prohibiting the combustion-engine vehicles to park on these places will be solved.
Conclusion:

Adoption of the law on the new RES support system – on a competitive basis and based on the auctions’ results – was a substantial progress. Therefore, a key challenge now is to develop high-quality bylaws and to introduce the «green» auctions. At the same time, the intensive development of RES sector, though indicating the investors’ interest, creates risks for the wholesale electricity market, in particular for providing guarantees for purchasing the «green» energy at preferential tariff. That is why discussions have emerged on further reduction of the feed-in tariff, development of the balancing and storage capacities, which will allow for the sustainable operation of the power system.
On June 6, 2019, the Verkhovna Rada adopted a law reaffirming Ukraine’s commitment to implement Directive 2009/119/EC. Nevertheless, the Government Action Program, under which the Ministry of Environment and Natural Resources undertakes to create a strategic energy stocks «in the medium term» in order «to overcome and offset any short-term or long-term, actual or potential circumstances, phenomena, factors or events that may disrupt safety and sustainability of the country’s energy sector» (goal 9.7), means a two-month stocks only, and there is no «strategic stocks availability» among the criteria for achieving the goal.

The draft resolution on approval of the model of minimum stocks of crude oil and petroleum products and the draft Law «On Minimum Stocks of Oil and Petroleum Products», agreed as early as February 2019, have not yet been submitted to the government for consideration.

There is no information on progress in the development of:

- amendments to the Tax Code regarding the target allocation of a share in excise tax from sales of petroleum products to form and maintain minimum stocks;
- amendments to the Law «On Licensing of Economic Activity» regarding inclusion into the list of licensed economic activities the activity aimed at maintenance of minimum stocks of oil and petroleum products;
- amendments to the Law «On the State Material Reserve» and the CMU Resolution «On Approval of the Regulation on the State Reserve Agency of Ukraine» regarding allocation of responsibility and duties of the State Reserve Agency in the system of building up and maintaining minimum stocks of oil and petroleum products;
- the CMU resolution on approval of the regulation on a central company for management of minimum stocks of oil and petroleum products.

The State Reserve Agency and the Ministry of Energy and Coal Industry also had to assess the need for additional capacity to store minimum stocks and to design it (goal 130 of the plan). Although a preliminary estimate found that less than 45% of the capacity was available (1.24 mcm of 2.87 mcm), even its modernization was far behind the plans approved. Despite the plans announced in December 2015 to construct a 50 tcm oil tank in the village of Smilne (Brody district, Lviv region) within 21 months, only the industrial buildings and equipment have been upgraded at Brody LODS. In 2016-2019, JSC «Ukrtransnafta» reported only about 8 upgraded tanks (two more planned for 2020), although in 2016 - 24 tanks were under repair or expert inspection.
Conclusion:

Despite some developments, the government has not yet fulfilled any of the goals provided by the plans for implementation of Directive 2009/119/EC for 2015-2019.

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

As part of bringing the requirements to the liquid fuels with biological components to the European standards, none of 19 national standards planned for adoption in 2019 has been adopted. For one document, the first version has been developed, for three it is under review, and no information available on other drafts progress.

On June 6, 2019, the Verkhovna Rada adopted the law confirming, in particular, Ukraine’s commitment to implement Directive 2009/28/EC. This commitment actualizes strengthening of the civil society control over the energy sector reform «so that the reforms are irreversible» (clause 11), also with regard to attempts of certain business groups to use Ukraine’s commitments for own purposes.

In particular, this refers to the efforts to support controversial draft law No.7 «On Amendments to Certain Legislative Acts of Ukraine on the Development of Liquid Fuel Production from Biomass and Implementation of Sustainability Criteria for Liquid Fuel from Biomass and Biogas for Transport». The document, formally initiated by a number of MPs but drafted by the State Agency for Energy Efficiency, was previously rejected by the Ministry of Energy and Coal Industry, the Ministry of Infrastructure, the Ministry of Economic Development and the State Regulatory Service as the one not compliant with the key regulatory policy principles. In turn, according to the Chief Scientific and Expert Directorate of the Verkhovna Rada, the draft law «needs comprehensive justification with provision of appropriate calculations» since «low demand for biofuel can reduce supply of traditional fuels in the market leading to shortage».

Conclusion:

Under the pretext of implementing Directive 2009/28/EC, some financial and industrial groups periodically seek to achieve their business goals. In this regard, it is necessary to strengthen the civil society control over their actions and to prevent adoption of regulatory acts aimed at reducing competition.

343 http://w1.c1.rada.gov.ua/pls/zweb2/webproc34?id=&pf3511=65942&pf35401=484913
344 http://w1.c1.rada.gov.ua/pls/zweb2/webproc34?id=&pf3511=65942&pf35401=484914
345 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=62987
347 http://w1.c1.rada.gov.ua/pls/web2/webproc34?id=&pf3511=62987&pf35401=442440
Directive 2003/96/EC on restructuring of the Community network for the taxation of energy products and electricity (Article 353, Annex XXVIII of the AA)

In the reporting period, the government did not pay much attention to implementation of Directive 2003/96/EC (in particular, the minimum fuel taxation provisions) on the background of the low income standards and a non-payments crisis.

However, starting from July 1, 2019, licensing has been introduced for business entities that produce and/or store, sale fuel in wholesale and/or retail348. Control over the aviation fuel circulation was increased: from October 1, 2019, the excise tax increased by 10 times will be applied in case of failure to confirm its intended use.

On September 19, 2019, the draft 2020 State Budget of Ukraine (registration No.2000349) was published, which in particular provided for:

- suspension of transferring a share (13.44%) of the excise tax on fuel produced in Ukraine and imported into the customs territory of Ukraine to the budgets of local self-government;
- starting from 2020, transferring 100% of the excise tax on fuel and import duties on the petroleum products to the State Budget special fund.

Conclusion:

Despite some changes in the structure and procedure of paying taxes and fees, on the background of low consumer solvency, the issue of raising taxation of motor fuels to the minimum levels required by Directive 2003/96/EC is not on the government’s agenda.


As from July 17, 2018, Directive 1999/32/EC in Ukraine is being implemented as scheduled351 (measure 119, deadline - December 31, 2019). However, this list does not include the objective to develop a regulation regarding the requirements to the aviation gasoline and jet fuels planned to be completed by January 1, 2018352. Its implementation was added to the plan 353 by the Ministry of Energy and Coal Industry. For now, no information about development progress for this document is available.

On June 27, 2019, the State Regulatory Service agreed354 the draft resolution on approval of the regulation on the requirements to liquefied gas for the road transport, municipal, domestic and

348 http://zakon.rada.gov.ua/laws/show/2628-viii
349 http://wl.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf351t=66853
351 http://zakon5.rada.gov.ua/laws/show/497-2018-%D1%80
352 http://www.me.gov.ua/Documents/Download?id=d8571d0b-53a6-4ade-88c1-75579be0cb39
industrial consumption, and on amendment of the CMU Resolution No. 1069 of December 28, 2016 (measure 12 of the plan\textsuperscript{355}).

At the same time, there is no information on submission to the government of a draft resolution\textsuperscript{356}, which would amend the regulation on the requirements to motor petroleum, diesel, marine and boiler fuels\textsuperscript{357} (goal 1702.4 of the plan\textsuperscript{358}).

There is no information with regard to creation of the State Environment Service, which the government has been planning to assign the supervisory (control) functions on the oil market\textsuperscript{359}. In defining the goals and powers of a new authority\textsuperscript{360}, the Ministry of Environment and Natural Resources should, in particular, include monitoring and quality & safety control of motor fuels, inspections of business entities and imposing sanctions on them in case of non-compliance with the requirements applicable. So far, the resolution establishing the State Environment Service, approved in August 2019, was canceled\textsuperscript{361}.

**Conclusion:**
The excessive number of commitments, the lack of resources, and the lack of continuity of the Ukrainian governments’ actions have led to a failure to reach most of the goals set out by Directive 1999/32/EC.


To fulfill measure 127 of the plan\textsuperscript{362}, under which, by the end of 2019, the Ministry of Energy and Coal Industry was instructed to develop and submit to the Cabinet of Ministers a draft concept for development of gas and oil refining industry, the market for oil products and gas fuels of Ukraine, a working group was formed\textsuperscript{363}. The draft concept should include a comprehensive vision of the purpose, goals, priorities, activities and amounts of the investments required to ensure:

- development of the domestic market for oil products and gas fuels;
- increase of the gas fuels supply and transit through Ukraine;
- increase of the share of gas fuels in the country’s fuel consumption balance;
- expansion of the facilities for production of petroleum products and gas fuels;
- optimization of diversification of oil, petroleum products and gas fuels supply in order to ensure the acceptable price environment, security of supply to consumers and energy security of Ukraine.

\begin{itemize}
  \item http://mpe.kmu.gov.ua/minugol/doccatalog/document?id=245328636
  \item http://www.drs.gov.ua/wp-content/uploads/2018/05/6795-10.05.18.pdf
  \item http://zakon.rada.gov.ua/go/927-2013-n
  \item http://zakon.rada.gov.ua/laws/show/1106-2017-%D0%BF
  \item https://www.kmu.gov.ua/ua/npas/pro-zatverd
  \item https://www.kmu.gov.ua/laws/show/497-2018-%D1%80
  \item http://zakon5.rada.gov.ua/laws/show/873-2019-%D0%BF
  \item http://mpe.kmu.gov.ua/minugol/control/uk/publish/article?art_id=245336530&cat_id=35109
\end{itemize}
At the same time, in view of actual liquidation of the main implementing body for the goals set in the plan for implementing Directive 98/70/EC – i.e., the State Enterprise «Oil-Refining and Petrochemical Industry Research Institute «MASMA» – approval in 2019 of 51 national standards stipulated by the National Standardization Program364 (as amended365) and required to harmonize the fuel quality and safety requirements in Ukraine and the EU is impossible. Only one document has been issued since the beginning of the year. The first versions366 are being developed for 50 standards.

Conclusion:

Implementation of Directive 98/70/EC in Ukraine occurs with a persistent violation of the previously set deadlines.


Although the goals list367 available at the website of the Ministry of Environment and Natural Resources confirmed that the plan368 was made familiar to the implementing authorities, the Ministry ignored goal 1695 under which it committed by December 31, 2018 to:

■ develop a draft regulation to establish the requirements for storage, transportation and reloading of fuel, related equipment and service stations;

■ make an inventory of the «terminals for storage and distribution of petroleum»;

■ prepare recommendations to exercise oversight of operation of the filling stations and «small-size oil storage tanks».

On September 10, 2019, the State Regulatory Service approved369 the draft Order of the Ministry of Finance «On Approval of the Procedure for Creating and Maintaining a List of Vehicles Moving Fuel or Alcohols»370.

This document regulates the registration of vehicles having the status of mobile excise warehouses and used by the business entities to move their own fuel, and provides for implementing the rules of the law371 regarding transportation of petroleum products from petroleum terminals to filling stations by road.

At the same time, a draft CMU resolution372 aimed at incentives for business entities to reduce losses of petroleum products during transportation from terminals to service stations revised by the Ministry

of Energy and Coal Industry and approved by the State Regulatory Service (decision No.375\textsuperscript{373}) was not submitted to the government for consideration. Within the framework of bringing the regulatory requirements to the oil tanks to the European ones, the first versions of three national standards\textsuperscript{374,375,376} were reported to be drafted in the reporting period.

**Conclusion:**

Despite availability of the plans to implement Directive 94/63/EC in Ukraine, their execution is unsatisfactory.

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

On June 6, 2019, the Verkhovna Rada passed a law\textsuperscript{377} confirming, in particular, Ukraine’s commitment to implement Directive 94/22/EC with a deadline of September 1, 2020\textsuperscript{378}. This commitment prompted the issue of developing a new version of the Subsoil Code, which was to be submitted to the parliament in Q4\textsuperscript{2018} (goal 99 of the plan\textsuperscript{379}). However, on September 19, 2019, only “launching the Subsoil Code update European project”\textsuperscript{380} was reported, with expected adoption of the document no sooner than 2021.

On June 12, 2019, the government amended\textsuperscript{381} the regulations on the procedure for provision of the mining allotments\textsuperscript{382}, eliminating the need to obtain a mining allotment act for the oil and gas industry. This document also made it possible to:

- re-issue mining allotment acts under a simplified procedure in case a special permit term is extended;
- agree mining allotment with the current legislation requirements regarding land classification for placement and maintenance of the facilities related to extraction of mineral resources as the sites used for the public needs.

Significant that the draft regulatory decision, developed by the State Labor Service\textsuperscript{383} (deadline – 1Q\textsuperscript{2017}\textsuperscript{384}), the State Regulatory Service agreed on November 14, 2018\textsuperscript{385}.

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\textsuperscript{374} http://uas.org.ua/ua/news/povidomlennya-pro-rozroblennya-pershoyi-redaktsiyi-natsionalnogo-standartu-4/
\textsuperscript{375} http://uas.org.ua/ua/news/povidomlennya-pro-rozroblennya-pershoyi-redaktsiyi-proektu-natsionalnogo-standartu-214/
\textsuperscript{376} http://uas.org.ua/ua/news/povidomlennya-pro-rozroblennya-pershoyi-redaktsiyi-proektu-natsionalnogo-standartu-215/
\textsuperscript{377} http://w1.c1.rada.gov.ua/pls/zweb2/webproc34?id=&pf3511=65942&p35401=484913
\textsuperscript{378} http://w1.c1.rada.gov.ua/pls/zweb2/webproc34?id=&pf3511=65942&p35401=484914
\textsuperscript{379} http://zakon5.rada.gov.ua/laws/show/497-2018-%D1%80
\textsuperscript{380} https://www.facebook.com/roman.opimakh/posts/13265274447523037
\textsuperscript{381} https://www.kmu.gov.ua/ua/npas/pro-vnesennya-zmin-do-polozhennia-120619
\textsuperscript{382} http://zakon2.rada.gov.ua/laws/show/59-95-%D0%BF
\textsuperscript{384} http://zakon2.rada.gov.ua/laws/show/1079-2016-%D1%80/paran146#n146
On June 19, 2019, the government amended the procedure for granting special permits for subsoil use, specifically:

- eliminated inaccuracies regarding the permit procedure terms and implementation of the Law «On Environmental Impact Assessment» requirements;
- set clear deadlines for informing the applicants about return of the documents which do not meet the requirements;
- eliminated the possibility of accepting documents from the subsoil users drawn up in violation of the requirements.

However, the mentioned document was approved contrary to the State Regulatory Service conclusion of its incompliance with the regulatory policy principles.

On September 29, 2019, the Cabinet of Ministers Program was published, with goal 9.6 «development of the domestic energy production» identified as one of the priorities for the Ministry of Environment and Natural Resources, and in accordance with goal 9.3 the ministry in charge was obliged to guarantee «open, competitive and high-quality auctions and competitions at the national and local levels for the subsoil use rights to attract investments and good practices» in order to «increase the revenues and percentage of minerals recovery».

Despite declaration of the goals mentioned, in the reporting period following issues were not resolved:

- updating the methodology for determining the initial auction price of a special permit for subsoil use by replacing the procedure for determining the permit price through cashflow discounting with setting the initial price at the customs value of oil and/or gas condensate and the volumes of their stocks (resources) as determined based on the geological and economic estimates. The relevant draft government Resolution «Issue of Determining the Price of a Special Permit for Subsoil Use» (the work plan of the Ministry of Environment and Natural Resources; goal 189 of the plan; deadline – November 2018) was rejected by the State Regulatory Service three times as the one being in non-compliance with the basic regulatory policy principles;
- amending the methodology for determining the value of the minerals stocks and resources of a deposit or a subsoil field provided for use (the deadline was postponed to October and December 2018). The draft resolution was rejected by the State Regulatory Service twice;
- adding the methodology for determining the cost of the geological information received at the

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386 https://www.kmu.gov.ua/ua/npas/pro-vnesennya-zmin-do-poryadku-nadannya-specialnih-dozvoliv-t190619
387 https://zakon.rada.gov.ua/laws/show/615-2011-%D0%BF
388 http://www.geo.gov.ua/wp-content/uploads/2019/04/%D0%9F%D0%BE%D1%8F%D1%81%D0%BD%D1%8E%D0%B2% D0%B0%D0%BB%D1%8C%D0%BD%D0%B0-%D0%87%D0%B0%D0%BF%D0%B8%D1%81%D0%BA%D0%B0.doc
390 http://zakon0.rada.gov.ua/laws/show/1374-2004-%D0%BF
397 https://zakon.rada.gov.ua/laws/show/244-2018-%D1%80
401 http://www.geo.gov.ua/wp-content/uploads/2018/05/zpostkmu1117_2017_ok_0.doc
state budget expense\textsuperscript{407}, the adjusted algorithm for its calculation (deadline - by the end of 2019\textsuperscript{408}). The relevant draft\textsuperscript{409} was also rejected by the State Regulatory Service\textsuperscript{410};

- approving the provision of subsoil for use. The law on amendments to the Law «On Local Self-Government in Ukraine» drafted as early as September 2017\textsuperscript{411} has not yet been agreed and submitted to the Verkhovna Rada for consideration (measure 36 of the plan\textsuperscript{412});

- transition to the internationally accepted hydrocarbons assessment systems (PRMS, JORC, etc.). Drafting and submission by the end of 2018 of a draft government resolution to amend the procedure for examining and assessing mineral reserves\textsuperscript{413} is provided for by the plan\textsuperscript{414};

- amending clause 17 of the procedure for granting special permits for subsoil use\textsuperscript{415} in order to «ensure further production activities in the area of using subsoil by the state unitary enterprises in case of their reorganization». The relevant draft government resolution\textsuperscript{416} added to the action plan of the Ministry of Energy and Coal Industry for 2019\textsuperscript{417} and recognized by the State Regulatory Service as including no regulatory requirements.

**Conclusion:**

Despite some progress, the excessive number of the commitments, the lack of control over their fulfillment, and incoherence of the authorities’ actions have led to significant delays in implementing Directive 94/22/EC in Ukraine.

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**Prohibition and elimination of the unauthorized withdrawal of oil and petroleum products transported through the territory of Ukraine (Article 275 of the AA)**

In 2014-2019, over 150 «tappings» into main pipelines (14 year-to-date) were discovered by special units of JSC «Ukrtransnafta» intended to remove unauthorized withdrawal of oil and petroleum products transported through the territory of Ukraine. However, despite the increased number of cases where organized crime groups use modern techniques and equipment for unauthorized withdrawal of oil, there is no systematic activity in this area. At the beginning of 2016, Naftogaz initiated enhanced liability for damage to main oil pipelines and development of a concept to guarantee their security. However, no relevant regulatory and legal documents have been developed.

**Conclusion:**

Improved reaction to unauthorized withdrawal of oil and petroleum products transported through the territory of Ukraine is possible only if the competent public authorities have a comprehensive and coordinated approach, which is currently absent.

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\textsuperscript{407} https://zakon.rada.gov.ua/laws/show/1075-2008-%D0%BF
\textsuperscript{408} https://menr.gov.ua/files/docs/nakazy/2019/nakaz_130.pdf
\textsuperscript{411} http://www.geo.gov.ua/wp-content/uploads/2018/05/proekt_zakonu_0.doc
\textsuperscript{412} https://zakon.rada.gov.ua/laws/show/865-94-%D0%BF
\textsuperscript{413} http://zakon.rada.gov.ua/laws/show/842-2018-%D1%80
\textsuperscript{414} http://zakon.rada.gov.ua/laws/show/615-2011-%D0%BF
\textsuperscript{416} http://mpe.kmu.gov.ua/minugol/doccatalog/document?id=245342447
Prevention of oil and petroleum products transit disruptions (Article 276 of the AA)

In the reporting period, the Ministry of Energy and Coal Industry (to implement clause «а» of Article 276 of the AA) failed to submit to the government a draft resolution on amendments to the procedure for decommissioning of oil, gas and refining products main pipelines\(^{418}\).

This document will allow regulating the sequence of actions for decommissioning the pipelines in case of justified impracticality of their further operation, end of life, emergency condition, construction of the bypassing lines, etc. (deadline - July 1, 2019).

The issue of approving the regulation on the commission for decommissioning of oil, gas and refining products main pipelines (deadline - July 1, 2019\(^{419}\)) remains unresolved. The relevant draft order of the Ministry of Energy and Coal Industry\(^{420}\) should define the main goals of the commission, its rights, powers of the chairperson, the rights and duties of its members, the sequence of actions when considering the documents prepared by a business entity, drawing up protocols and preparing proposals for decommissioning (or a refusal).

At the same time, the risks of accidental interruption, reduction or suspension of oil transit and transportation through the territory of Ukraine are constantly increasing due to the years of under-financing the activities to ensure reliability of the oil system facilities.

Conclusion:

Activities to prevent disruptions in the transit and transportation of oil and petroleum products are carried out on emergency basis and have not become systematic.

Ensuring equal access and activities in hydrocarbons exploration and production (Article 279 of the AA)

In the reporting period, out of 34 special permits for using oil&gas resources planned to be sold at the electronic auctions, only 19 were sold (although earlier 50 onshore and 5 offshore fields\(^{421}\) were a goal).

On July 5, 2019, the government announced the winners in the competitions for concluding production sharing agreements (PSAs) for hydrocarbons to be extracted at 9 oil&gas fields\(^{422}\). Their minimum commitments in the first 5 years are to invest over 430 million USD in seismic works and drill 39 exploration wells\(^{423}\).

Instead, on September 11, 2019, the results of the PSA competition for hydrocarbons to be produced

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\(^{418}\) http://mpe.kmu.gov.ua/minugol/control/uk/publish/article?art_id=245357631&cat_id=35082

\(^{419}\) http://mpe.kmu.gov.ua/minugol/control/uk/publish/article?art_id=245306373&cat_id=35082


\(^{421}\) http://zakon.rada.gov.ua/laws/show/842-2018-%D1%80

\(^{422}\) https://www.kmu.gov.ua/ua/npas/pro-viznachennya-peremozhciv-konkursiv-na-ukladennya-ugod-pro-rozpodil-vug-levodni-m-050719

at Delfin field (Black Sea offshore)\textsuperscript{424} were cancelled\textsuperscript{425}, although on July 26, 2019, Trident Black Sea Inc.\textsuperscript{426} was announced as the winner.

At this writing, bids in the PSA competition for hydrocarbons to be produced at Okhtyrska, Grunivska and Ichnianska fields\textsuperscript{427} were being accepted. Although the conditions were approved as early as December 18, 2018\textsuperscript{428}, the reasons for the delayed development of the documentation for these fields were not reported.

Due to reorganization of the system of central executive authorities, the government changed\textsuperscript{429} the composition of the Interagency Commission on PSAs Conclusion and Execution formed in 2013\textsuperscript{430}.

\textbf{Conclusion:}

The principles of equal access and activities in hydrocarbons exploration and production are gradually being introduced in Ukraine. However, actual results are increasingly at odds with the plans.

\textbf{Ensuring transparency of providing licenses for hydrocarbons exploration and production (Article 280 of the AA)}

In order to ensure the transparency of granting and applying special permits for subsoil use, on April 23, 2019, the State Service for Geology and Mineral Resources published references to the open electronic services for obtaining information about production of oil or gas condensate on a certain territory\textsuperscript{431}, including:

\begin{itemize}
  \item location of oil&gas field, its area, hydrocarbon reserves, information about subsoil user, the date of issue and expiration of special permit for subsoil use\textsuperscript{432};
  \item special permits granted on the territory of a certain consolidated community (an interactive map)\textsuperscript{433};
  \item data from the register of oil and gas wells exploited, conserved or abandoned\textsuperscript{434};
  \item planned activities of the business entities receiving or extending their special permits for subsoil use, socio-economic impact and environmental risks of such activities in the framework of environmental impact assessment (with the possibility to make comments and suggestions)\textsuperscript{435};
  \item planned activities, authorizations and procedures of business entities of most interest to the public (SaveEcoBot service)\textsuperscript{436};
\end{itemize}

\textsuperscript{424} https://www.kmu.gov.ua/ua/npas/pro-provedennya-konkursu-na-ukladennya-ugodi-pro-rozpodil-vuglevodniv-yaki-vidobuvatiumysya-u-mezhah-dilyanki-delfin
\textsuperscript{426} https://www.facebook.com/ponomarev/posts/10157490376545802
\textsuperscript{427} http://enkorr.com.ua/a/news/Ukraina_nachala_priem_zayavok_na_SRP_po_3_uchastkam/237779
\textsuperscript{428} https://www.kmu.gov.ua/ua/news/glava-uryadu-pro-stan-rinku-energoresursiv-zakritij-klub-v-energosferi-zrujnovano
\textsuperscript{430} https://zakon.rada.gov.ua/laws/show/644-2013-%D0%BF
\textsuperscript{431} http://www.geo.gov.ua/prozori-nadra-5-korisnix-servisiv/
\textsuperscript{432} http://geoinf.kiev.ua/specdozvoli/
\textsuperscript{433} http://geoinf.kiev.ua/wp/interaktivni-karty-spetsdozvoliv.htm
\textsuperscript{434} http://geoinf.kiev.ua/wp/sverdlovini.php?admitad_uid=4867ab06d8d9368ebf337fbb8b85d2a38
\textsuperscript{435} http://eia.menr.gov.ua/search
\textsuperscript{436} https://www.saveecobot.com/
progress and results of the electronic bidding for the special permits for subsoil use in oil and gas sector\textsuperscript{437};

receipt by the local budgets of royalties for oil and gas condensate exploration and production\textsuperscript{438}.

On October 23, 2019, the State Service of Ukraine for Geodesy, Cartography and Cadastre began to publish its opinions on consideration of land allotment projects\textsuperscript{439}. The information is updated automatically and allows to search for the parameter selected, including the region, type and status of the opinion\textsuperscript{440}.

On September 29, 2019, the Cabinet of Ministers Program was published, under which the ministry in charge undertook to develop a “data center for digitizing geological information and maintaining a knowledge data base”, to open “access to geological information and metadata through creation of the interactive data room and implementation of an online subsoil user interface”\textsuperscript{441}. This, in particular, should be facilitated by the collaboration between the State Service for Geology and Mineral Resources and the United States Agency for International Development in terms of creating “a geological data bank, an information system to manage the geological and oil&gas resources database”\textsuperscript{442}.

At the same time, while noting a simplified access to the information about subsoil, the market participants have repeatedly expressed their concern about insufficient financing by the SSRE “Geoinform of Ukraine” of the activity to digitalize geological information.

In the reporting period, no mechanism was created for generating and submitting to the European Commission of the annual reports containing information on the fields open for development, the permits granted, the list of organizations licensed, and the hydrocarbon reserves (goal 1765.9 of the plan\textsuperscript{443}).

\textbf{Conclusion:}

In 2019, the government has taken a number of steps to ensure the transparency of granting and applying special permits for subsoil use. However, compliance with the requirements of Article 280 of the AA will be possible only with the proper financing of activities to digitalize geological information and maintain the relevant catalogs.

\textbf{Informing and protection of users against unfair pricing, as well as access to energy resources for the users, in particular the most vulnerable households (Article 337 of the AA)}

In order to protect consumers from unfair pricing practices, starting from July 1, 2019, control over the fuel turnover has been strengthened, in particular, representation of petroleum products movement at the storage locations in the Electronic Petroleum Products Sales Administration System has been

\textsuperscript{437} https://prozorro.sale/
\textsuperscript{438} http://www.openbudget.gov.ua/
\textsuperscript{439} https://www.kmu.gov.ua/ua/news/derzhgeokadastr-vidkryv-rozshireni-dani-pro-zemelni-dilyanki
\textsuperscript{440} https://land.gov.ua/exterritoriality/
\textsuperscript{441} https://program.kmu.gov.ua/meta/ukrainci-bils-efektivno-ta-osadlivo-vikoristovuut-prirodni-resursi
\textsuperscript{442} http://www.geo.gov.ua/agentstvo-ssha-z-mizhnarodnogo-rozvitku-stvorit-dlya-ukra%F0%9F%82%9Dni-sxovishhe-geologichno%F0%9F%82%9Fi-informaci%F0%9F%82%9D-golova-derzhgeonadr/
\textsuperscript{443} http://zakon.rada.gov.ua/laws/show/1106-2017-%D0%BF
provided for, and licensing of production, storage, wholesale and retail trade in fuel has been introduced.

In the context of this activity, on June 19, 2019, the government:

- approved the procedure for keeping the Unified State Register of the economic entities that have been licensed for the right to produce, store, sale fuel in wholesale and retail, and the places of fuel production, storage, wholesale and retail;
- changed the procedure for keeping the Unified Register of Excise Tax Invoices;
- clarified the procedure for keeping the Unified State Register of the fuel flowmeters and level meters in the tanks, and transfer of the accounting data by electronic means.

Adoption of such decision will reduce the share of “grey” fuel market as its functioning results in the annual losses to the state and local budgets in the amount of app. 10 bn UAH.

On September 29, 2019, the Cabinet of Ministers Program was published, with goal 9.6 aimed at reduction of the energy products price: “no one shall be able to be a price leader. The fuel and energy sector shall clearly respond to the global trends in the energy resource price decline.” The criteria for achieving this goal were: “reducing the energy products price to their fairly and transparently delivered value” and “reducing the number of households below the energy poverty line.”

At the same time, despite the lack of effective mechanisms to inform and protect consumers from unfair pricing practices in Ukraine, for goals 726 and 735 of the plan related to implementing Article 337 of the AA the government “forgot” that all energy resources, not just electricity and natural gas, were specified in the Article.

**Conclusion:**

Despite some achievements, the government’s actions to protect Ukrainian consumers from unfair pricing practices in respect of motor fuels are of sporadic and unsystematic nature.

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**Recovery and utilization of methane emissions from oil operations (Article 339 of the AA)**

In 2019, the Government has not encouraged utilization of methane emissions by the business entities engaged in oil operations.

**Conclusion:**

The actions provided by Article 339 of the AA are not controlled by the government (at least, in public domain).

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446  [https://zakon.rada.gov.ua/laws/show/114-2016-%D0%BF](https://zakon.rada.gov.ua/laws/show/114-2016-%D0%BF)
447  [https://zakon.rada.gov.ua/laws/show/891-2017-%D0%BF](https://zakon.rada.gov.ua/laws/show/891-2017-%D0%BF)
Ensuring early assessment of potential risks and problems related to the oil demand and supply (Annex XXVI of the AA)

The situation resulting from the low-quality Russian oil entering the Druzhba oil pipeline\textsuperscript{450} proves that in 2014-2019 the government has not cooperated with the EU institutions in terms of early assessment of the potential risks and problems related to oil supply and demand.

E.g., suspension of the crude oil transit through the Druzhba oil pipeline occurred only on April 25, 2019. Before, oil was supplied on a scheduled basis (40,000 tons per day), although JSC “Gomeltransneft Druzhba” (Belarus) informed JSC “Ukrtransnafta” on receipt of the low-quality crude oil from JSC “Transneft – Druzhba” section (the Russian Federation) as early as on April 19, 2019\textsuperscript{451}. As it turned out, oil operators were not obliged to monitor quality, although transportation of crude of the quality significantly different from the standard can damage the equipment (pipelines, pumps and tanks)\textsuperscript{452}.

Though the State Reserve Agency and the Ministry of Energy and Coal Industry have been instructed\textsuperscript{453} to develop action plans to put the emergency and special reserves into operation in case of significant oil supply disruption (goal 749.3), open sources provide no information on the progress.

Conclusion:

There is no government-controlled assessment of the potential oil supply risks and problems (at least, in public domain).

\textsuperscript{450} https://www.ukrtransnafta.com/ukrtransnafta-vimusheno-prizupinila-robotu-naftoprovodu-druzhba/
\textsuperscript{452} Ibid.
\textsuperscript{453} http://zakon.rada.gov.ua/laws/show/1106-2017-%D0%BF
BUSINESS CLIMATE

Implementation of the key provisions of the Ukraine-EU Association Agreement (AA) with regard to the public procurement has been successfully completed, so most changes are aimed at the ProZorro service selective improvement and overall perfection of the system. In particular, new refinement fields are introduced to gradually increase the possibility to analyze the procurements, to create services both for the customers and participants, etc. E.g., the «type of procurement item» field allows the customers to more clearly formulate tender announcements and helps the businesses to find the right tenders by the criteria of goods, works, or services.

Among other improvements are:

- search engine optimization in Russian and Ukrainian;
- structuring by the type of businesses - large, medium, small, micro;
- availability of the “VAT in the contract” field;
- possibility to promptly (within 2 days) obtain a certificate from the Ministry of Internal Affairs to participate in the ProZorro tenders;
- availability of the “settlement period” field, and a number of other changes.

Only one legislative change was noted: draft law No. 1076 on improvement of the public procurement, approved in September and sent to the President for signing. Its provisions envisage enhanced liability with respect to the procurement, regulate the procurement issues during elections, introduce the «simplified procurement» concept, an electronic catalog for purchases of goods and services for the amount of 50,000 to 200,000 UAH. In general, the new draft law aims to facilitate and normalize small procurements using the catalog.

Conclusion:

The public procurement reform may be considered completed, and most activities are focused on improving the ProZorro system. The only change to the legislation resulted in the adoption of amendments to the framework law to extend its effect on the sub-threshold procurements.
In accordance with its powers, the Antimonopoly Committee of Ukraine (AMCU) is responsible for preventing anticompetitive activities. In general, the antitrust legislation of Ukraine at the time of signing the Association Agreement was of sufficiently high quality and in line with the European legislation in most respects. Therefore, a number of the selective adjustments were required to implement the AA provisions.

The mechanism for calculating the concentration parties’ indicators could be adjusted two years ago. However, the relevant draft laws are still in the Verkhovna Rada. On November 9, 2017, the relevant draft law was approved in the first reading, so it was automatically registered for further consideration (registration No.0877461) by the new parliament convocation. The draft law regulates the procedure for granting permits for the vertical concerted actions, simplifies the procedure for considering applications for the concentration permits.

As for the draft law on the procedure for calculating penalties and the procedure for enforcing such penalties by the AMCU for violation of the legislation on protection of economic competition, it was introduced to the Verkhovna Rada and later delisted.462

In the meantime, on June 13, 2019, the government adopted the resolution on amendments to the common requirements to concerted actions for exemption from advance obtaining of the permits for concerted actions from the AMCU authorities.463 The resolution harmonizes the EU provisions with the Ukrainian legislation regarding the criteria for applying a group permit; the practice of dealing with violations in the form of anti-competitive concerted actions; and removal of the provisions of no independent scope.

On August 8, 2019, the AMCU issued an order «On Approval of the Procedure for Harmonizing the Professional Conduct Rules in Competition».464 The rules are expected to be used by the business entities when concluding contracts, drafting the constituent and other documents.

Conclusion:

The AMCU initiatives aimed at improving the antitrust procedures do not always end with adopting a relevant regulatory act. Some of them are inhibited by other public bodies at the stage of approval.

Articles 262-264, 267 of the AA on state aid

On July 10, 2019, the Cabinet of Ministers approved changes to the procedure for examination and selection of the investment projects to be granted state aid in the form of public guarantees. Specifically, the project criteria for eligibility have been defined, the deadline for making a relevant decision and other details have been determined. The list of cases for a negative opinion of state

461 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=66535
462 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=66497
463 https://zakon.rada.gov.ua/laws/show/z0768-19
464 http://search.igazakon.ua/_doc2.nsf/lnkt/RE33990.html
expertize is now clarified – e.g., when the net present value is negative, when the internal rate of return is less than the standard discount rate or the profitability index is less than 1.

Conclusion:

The AA provisions regarding the state aid control have almost been introduced.

Articles 378-379 of the AA on creation of favorable conditions for doing business

CURRENCY REGULATION

In 2019, currency liberalization continued. For example, the Law «On Currency and Currency Transactions» came into force in February, which provided for the currency market deregulation and some currency liberalization for businesses. In particular, repatriation of the foreign currency dividends for 2018 was allowed within the limit of 7 million EUR per month, and starting from March 1, 2019, the rate of mandatory sale of the foreign currency receipts was reduced from 50% to 30%. Later, in May 2019, the limit was raised to 12 million EUR per month, and in July all restrictions on the dividend reparation were lifted.

The requirements for the advance UAH reservation to purchase foreign currency and for obligatory sale of the foreign currency receipts were canceled as well. The restrictions on the foreign currency purchase at the expense of credit institutions were lifted allowing the businesses to better manage their funds, increase liquidity and hedge against the currency fluctuations.

The trend to gradually decrease the interest rate continues: the National Bank of Ukraine’s Board initially, in July, reduced it to 17%, then, in September, to 16.5%.

PROMOTION OF INVESTMENTS

With a view to accelerating the economic development, enhancing Ukraine’s competitiveness and shifting the focus from cheap labor to high-tech production, on July 10, 2019, the Cabinet of Ministers endorsed the Strategy for Development of Innovative Activities by 2030.

To continue the matter of innovations, on July 11, 2019, the Prime Minister Volodymyr Groysman and the Minister of Finance Oksana Markarova launched the Ukrainian Startup Fund, which would provide grant funding to the companies having innovative products at early stages of development. The authorized capital of the Fund was formed at the expense of the state budget and amounted to 390
million UAH. The amount of grant for a project can reach 75,000 USD.

Inter alia, Standard & Poor’s Financial Services LLC upgraded Ukraine’s long-term sovereign credit rating in foreign and national currencies from «B-» level to «B», and Ukraine’s national rating to from «uaBBB» level to «uaA». The agency also confirmed the short-term sovereign credit rating at «B». The outlook is stable.

Also, the businesses were given an opportunity to extend the settlement period for exports and imports of goods from six months to a year477.

FACILITATION OF TAX ADMINISTRATION

In the monitoring period, the Verkhovna Rada adopted laws providing for introduction of a single account for paying social security contribution and personal income tax, as well as an electronic cabinet to increase the level of openness, transparency and trust of taxpayers478,479.

On September 19, the Law No. 115-IX480 on submission of a consolidated report on social security contribution and personal income tax was adopted. The purpose of the changes is to improve the business climate and tax administration, to reduce the number and scope of tax reporting. The relevant amendments were also made to the Tax Code481.

Conclusion:

Entry into force of the Law «On Currency and Currency Transactions» gave impetus to a number of actions towards currency liberalization. The requirements for the dividends repatriation and mandatory foreign currency sales were reduced and subsequently lifted; the National Bank interest rate was brought down. In addition, a number of the draft laws aimed at facilitating tax administration, increasing the transparency of tax payments, and reducing the number and scope of tax reporting are being implemented.

Articles 381, 382 of the AA on extractive industry transparency

The feasibility study to create an online platform for the extractive companies and authorities to report under the Extractive Industries Transparency Initiative (EITI) Standard has been completed. The relevant document was prepared by Ernst & Young and submitted to the Ministry of Energy and Coal Industry482. In particular, the information available to all authorities (the Ministry of Energy and Coal Industry, the State Fiscal Service, the State Statistics Service, the State Service for Geology and Mineral Resources and the NEURC) was structured, the online platform concept, including its functionality, schematics of all the related business processes and other technical details (requirements) was formulated. In general, the results of the study allow preparing detailed tender documentation and select a company for development of this platform.

477 http://www.me.gov.ua/News/Detail?lang=uk-UA&id=216d6fba-3525-4f34-ac7d-73265b413f57-&title=UriadUkhvalivRishenniaSchodoUmovProdovzhenniaStrokivRozrakhunkivPrizdiisenniOperatsiiZEksportuTalimportu
478 http://w1.cf.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=66274
479 http://w1.cf.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=66281
480 https://zakon.rada.gov.ua/laws/show/115-ix
481 https://zakon.rada.gov.ua/laws/show/116-ix
482 http://mpe.kmu.gov.ua/minugol/control/uk/publish/article?art_id=245340774&cat_id=35109
In the transition period, until the online platform is operational, the Ukrainian EITI report will be further prepared with the participation of the Independent Administrator. As of this writing, Ukraine’s EITI report for 2017 has been developed.

Meanwhile, in order to enforce the Law «On Ensuring Transparency in Extractive Industries», the Ministry of Energy and Coal Industry has drafted and published the templates and instructions how to fill out the reports: on payments received; on payments to government; and a consolidated report.

According to them, the extractive companies shall disclose information about their ultimate beneficial owners, key operating results and taxes paid. In particular, reporting by the following indicators is provided:

- general information about a company: from the registration data including the final beneficial owners, to labor disaggregated by age, gender and managerial distribution;
- extraction volumes with a breakdown by minerals and individual fields, including the volumes sold and transportation costs;
- payment of taxes by type (e.g., royalty, environmental tax, etc.) and payment entities, as well as other indicators provided by the international EITI Standard.

The law stipulates that the reports shall be submitted by the reporting companies by September 1. At the same time, there are reasonable doubts that the extractive companies will in fact disclose such information before the end of 2019. The key reason is that the reporting forms have yet to be agreed with the EITI Multi-Stakeholder Group and subsequently adopted by the relevant decision of the CMU. In the first case, the MSG composition has not been approved yet (the documents are pending resolution of the State Regulatory Service). In the second case, as of September, the Ministry’s reorganization is ongoing, so its activity is slowed down due to the organizational difficulties. In August, the Ministry of Energy and Coal Industry clarified that the reports on payments to government should be submitted by extractive companies after the Cabinet of Ministers passes a resolution approving the reporting scope and forms.

Conclusion:

Implementation of the Extractive Industries Transparency Initiative standard in Ukraine faces difficulties. This year, the delays in approving the regulatory acts to fulfill the Law «On Ensuring Transparency in Extractive Industries», and the reporting forms in particular, are the key reason. However, progress has been made in developing an online platform to introduce automatization of data collection and publishing in order to reduce the impact of external factors on disclosure of the extraction data in future.
In May 2019, the Energy Community Secretariat published its evaluation report on the NEURC reform. Most of the legislation provisions, updated in 2016 in compliance with the EU law, have been implemented. The most significant achievement in the past year was appointment under a competitive procedure of 5 new commissioners, which in fact guaranteed the Regulator’s political independence.

As noted in the report, the procedure for funding the NEURC was still in progress. For this purpose, the Verkhovna Rada should amend the Budget Code specifying that the Regulator’s budget be based on contributions paid by the energy and utility companies. The relevant draft law was registered in the parliament of previous convocation in July 2017 but was not considered. The necessary amendments to the Budget Code shall be prepared and approved by MPs of the new convocation.

The NEURC reform in terms of its staff is not complete - the Regulator continued to work with 5 members instead of 7. The activity of the competition commission to fill the vacant positions is prevented due to the lawsuits filed by Dmytro Vovk and Anton Hudachenko appealing the decision on non-admission to participation in the competition for two vacant positions. It should be noted that the plaintiffs never appeared in court. The Vovk case was left without consideration due to the plaintiff’s systematic failure to appear in court; the decision on his non-admission remains in force. The Hudachenko case was not considered by court. To sum up, the ban on holding a second competition for two vacant positions at the NEURC remains in force.

On June 13, 2019, the Constitutional Court of Ukraine (CCU) ruled on a lawsuit filed by 46 MPs on the unconstitutionality of certain provisions of the Law «On the National Energy and Utilities Regulatory Commission» and their expiration on December 31, 2019. These provisions include the independent status of the NEURC, the powers of the President to appoint and dismiss its members, as well as the powers of the President and the Verkhovna Rada to appoint members of the competition commission. At the same time, the CCU decision emphasizes that «by its functional purpose, area of activities and powers, the NEURC has the signs of a central executive authority», and therefore should be subordinated to the Cabinet of Ministers. The legislative differences regarding the NEURC status should be resolved by the end of 2019, otherwise, as of January 1, 2020, the Regulator’s legitimacy will be disputed.

The Energy Community Secretariat responded to this CCU decision. According to the statement, the NEURC as an energy regulator cannot be subordinated to the government since this is in direct contradiction to the Third Energy Package.

In the context of resolving a legislative dilemma with the Regulator and some other independent authorities, on August 29, 2019, the President Volodymyr Zelenskyi submitted an urgent draft law No.1014 on the relevant powers of the President to form independent regulatory bodies. In September, the draft law was preliminarily approved by the parliament and sent to the Constitutional Court in order to get its opinion. Once the Constitution is amended, the parliament shall make relevant changes to the NEURC Law. As of the end of September 2019, neither draft amendments nor even a discussion in this regard have taken place.

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488 [https://www.slideshare.net/NKREKP/the-national-energy-regulatory-authority-of-ukraine](https://www.slideshare.net/NKREKP/the-national-energy-regulatory-authority-of-ukraine)
Conclusion:

In most key respects, the Regulator’s activities are in line with the EU Third Energy Package, but not in full. Moreover, a number of challenges could undermine all previous achievements. These include a long-lasting prevention from an open competition for two vacancies at the NEURC, the decision of the Constitutional Court regarding the NEURC status and the unlawfulness of its members’ appointment by the President, and the lack of parliamentary action to resolve this legislative conflict. The process of the Regulator’s budgeting is also not fully regulated.
LIST OF LAWS AND REGULATIONS
VERKHOVNA RADA OF UKRAINE

- Law of Ukraine of June 6, 2019, No.2739-VIII “On the decision of the Ukraine-EC Association Council concerning introduction of changes and amendments to the Annex XXVII to the Association Agreement between Ukraine and the European Union, the European Atomic Energy Community and its member states”
- Law of Ukraine of April 25, 2019, No.2712-VIII “On amending some laws of Ukraine concerning maintaining the competitive conditions for generating electricity from alternative energy sources”
- Law of Ukraine of July 11, 2019, No.2754-VIII “On amending some legislative acts of Ukraine on ensuring access to the charging stations infrastructure for electrical vehicles”
- Draft Law of Ukraine “On amending certain Laws of Ukraine concerning resolving specific issues in the housing and utilities sector” (registration No.10228 of April 12, 2019)
- Draft Law of Ukraine “On amending certain Laws of Ukraine with regard to unbundling of gas transmission activities” (registration No.2239 of October 7, 2019)
- Draft Law of Ukraine “On amending certain Laws of Ukraine with regard to unbundling of gas transmission activities” (registration No.2239-1 of October 17, 2019)

CABINET OF MINISTERS OF UKRAINE

- Resolution of February 6, 2019, No.62 “On amending some resolutions of the Cabinet of Ministers of Ukraine”
- Resolution of February 7, 2019, No.140 “On determining an authorized bank for the electricity market”
- Resolution of February 27, 2019, No.150 “On approving the Technical Regulations concerning the ecodesign requirements for the electricity consumption by external power supply sources in the off-load mode and their average efficiency in the active mode”
- Resolution of February 27, 2019, No.151 “On approving Technical Regulations concerning requirements to the ecodesign of fans equipped with motors of the nominal electrical capacity between 125 W and 500 kW”
- Resolution of February 27, 2019, No.152 “On approving Technical Regulations concerning requirements to the ecodesign for the small, medium-size and big power transformers”
Resolution of February 27, 2019, No.153 “On approving Technical Regulations concerning requirements to the ecodesign of sealless autonomous circulation pumps and sealless circulating pumps integrated into devices”

Resolution of February 27, 2019, No.154 “On approving Technical Regulations concerning requirements to the ecodesign of water pumps”

Resolution of February 27, 2019, No.155 “On approving Technical Regulations concerning requirements to the ecodesign of vacuum cleaners”

Resolution of February 27, 2019, No.156 “On approving Technical Regulations concerning requirements to the ecodesign for simple digital TV receivers”

Resolution of February 27, 2019, No.157 “On approving Technical Regulations concerning requirements to the ecodesign of electrical motors”

Resolution of February 27, 2019, No.158 “On approving Technical Regulations concerning requirements to the ecodesign of domestic refrigerating units”

Resolution of March 20, 2019, No.245 “On amending item 5 of the Technical Regulations for devices operating on the gas-type fuel”


Resolution of April 17, 2019, No.324 “On founding the state enterprises “Guaranteed Buyer” and “Market Operator”

Resolution of April 17, 2019, No.373 “Certain issues of granting the housing subsidies and benefits in monetary form to cover the housing and utility services”

Resolution of May 8, 2019, No.380 “On amending the Resolution of the Cabinet of Ministers of Ukraine of April 3, 2019, No.293”

Resolution of June 5, 2019, No.483 “On approving the Regulation of Public Service Obligations of Electricity Market Participants» (with revisions and amendments)

Resolution of June 5, 2019, No.484 “On amending the Resolution of the Cabinet of Ministers of Ukraine of July 1, 2016, No.496”

Resolution of June 5, 2019, No.485 “On amending the Resolution of the Cabinet of Ministers of Ukraine of April 3, 2019, No.293”

Resolution of June 12, 2019, No.500 “On amending the Regulation on the procedure of issuing the mining allotments”

Resolution of May 8, 2019, No.528 “On amending the Regulation on the procedure of designating the housing subsidies”

Resolution of June 19, 2019, No.534 “On approving Technical Regulations concerning requirements to the ecodesign for household tumble driers”

Resolution of June 19, 2019, No.545 “On approving the Procedure for maintaining the Unified State Register of business entities that have been licensed to produce, store, trade fuel in wholesale and retail, and for places of production, storage, wholesale and retail trade of fuel and to amend certain regulations of the Cabinet of Ministers of Ukraine”

Resolution of June 19, 2019, No.556 “On amending the State Targeted Economic Program for energy efficiency and development of the energy production from alternative energy sources and alternative fuels for 2010-2020”

Resolution of June 19, 2019, No.558 “On amending the Procedure for issuing special permits for subsoil use”
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<td>Order of June 26, 2019, No.456-r “On setting clear goals for the activities of state unitary enterprises and economic entities with 100 percent of the authorized capital (shares) belonging to the state, and which are managed by the Cabinet of Ministers of Ukraine, for 2019”</td>
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<td>Order of September 11, 2019, No.793-r “Certain issues of the supervisory board of the joint-stock company “National Joint-Stock Company “Naftogaz of Ukraine””</td>
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List of Laws and Regulations
NEURC

- Resolution of January 18, 2019, No.26 “On amending the Resolution of the National Energy and Utilities Regulatory Commission of June 13, 2013, No.700” (Procedure of distribution of funds on the special current accounts of universal service suppliers, the supplier of last resort, and distribution system operators)
- Resolution of February 5, 2019, No.156 “On approving the Procedure for settlement of disputes between the business entities in the field of energy and utilities”
- Resolution of February 12, 2019, No.191 “On amending the Temporary procedure of determining the volume of electricity procured by electricity suppliers and distribution system operators on the wholesale electricity market during the transition period until the date the new energy market will start operating”
- Resolution of February 28, 2019, No.282 “On approving the NEURC reporting forms for the electricity market participants and guidelines on their filling-in”
- Resolution of March 29, 2019, No.450 “On approving the monitoring reporting forms for the electricity market participants and guidelines on their filling-in”
- Resolution of April 12, 2019, No.558 “On approving Amendments to some NEURC resolutions”
- Resolution of April 22, 2019, No.580 “On approving Amendments to some NEURC resolutions”
- Resolution of April 22, 2019, No.585 “On approving the Procedure of setting up (calculating) the tariff for electricity transmission service”
- Resolution of April 22, 2019, No.586 “On approving the Procedure of setting up (calculating) the tariff for dispatching (operative and technological) management service”
- Resolution of April 26, 2019, No.635 “On approving the Methodology for calculating the prices for the auxiliary services”
- Resolution of April 26, 2019, No.642 “On approving the Procedure for publishing information on the share of each energy source used for electricity generation and the environmental impact of electricity generation”
- Resolution of May 17, 2019, No.750 “On amending the NEURC Resolution of September 30, 2015, No.2494”
- Resolution of June 24, 2019, No.1168 “On amending the NEURC Resolution of March 14, 2018, No.307”
- Resolution of June 24, 2019, No.1169 “On amending the NEURC Resolution of March 14, 2018, No.308”
- Resolution of July 2, 2019, No.1333 “On approving the Rules for consideration of consumer appeals concerning activities of companies in the field of energy and utilities, and settlement of disputes”
- Resolution of July 9, 2019, No.1381 “On approving the Methodology of calculating the payment for the commercial electricity metering services provided by the distribution system operator in the territory of its licensed activity”
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- Resolution of August 1, 2019, No.1623 “On approving amendments to the NEURC Resolution of July 7, 2016, No.1234”
- Resolution of August 23, 2019, No.1733 “On approving amendments to the Procedure of certification of the gas transmission system operator”
- Resolution of September 13, 2019, No.1952 “On approving amendments to the Procedure of supervising compliance with the corresponding legislation and licensing conditions of the licensees in the field of energy and utilities”
- Draft Resolution «On approving the Procedure of investigating electricity and gas markets functioning in Ukraine”
- Draft Resolution «On amending the Natural Gas Supply Rules”
- Draft Resolution «On approving amendments to the Methodology of determining and calculation of tariffs for the natural gas transmission services for entry and exit points based on the long-term incentive-based regulation”

MINISTRY OF ENERGY AND ENVIRONMENTAL PROTECTION (MINISTRY OF ENERGY AND COAL INDUSTRY)

- Draft Law of Ukraine “On the fundamentals of energy security”
- Draft Law of Ukraine “On amending certain Laws of Ukraine concerning creation of prerequisites for introducing settlements and balancing in the gas market based on energy units” (new version)
- Draft Resolution of the Cabinet of Ministers “On approving Technical regulations of natural gas”
- Draft Resolution of the Cabinet of Ministers “On approving Technical regulations on the requirements to liquefied gas to be used by vehicles, public utilities and industry, and amending the Resolution of the Cabinet of Ministers of Ukraine of December 28, 2016, No.1069”
- Draft Resolution of the Cabinet of Ministers “On approving the volume of natural gas insurance reserve for 2020”
- Draft Order of the Cabinet of Ministers “Certain issues of the commercial (instrumental) metering of natural gas”
- The draft Order “On approving the Monitoring procedure for demand and supply balance of natural gas in Ukraine”
- The draft Order “On approving the Procedure for the technical operation and certification of gas supply systems”
- Report on results of the security of gas supply monitoring in 2018

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- Order of the Ministry of Regional Development, Construction, Housing and Utilities of Ukraine of November 22, 2018, No.315 “On approving the Methodology for distributing among consumers of the volumes of utilities consumed in a building” (passed through the state registration by the Ministry of Justice No.1502/32954 of December 28, 2018)
- Instruction of the Antimonopoly Committee of Ukraine of August 8, 2019, No.14-rp “On approving the Procedure for agreement of the Professional Rules of Conduct in the field of competition”

- Decision of the Constitutional Court of Ukraine of June 13, 2019, No.5-r/2019 re. the constitutional submission by 46 MPs concerning the compliance with the Constitution of Ukraine (constitutional nature) of part one of Article 1, of item 2 of part one of Article 4, of part one, paragraphs one, two of part two of Article 5, of paragraphs two, three, four, five, thirty-nine, forty of part three, of part six of Article 8 of the Law of Ukraine “On the National Energy and Utilities Regulatory Commission” (NEURC case).