

POSITION PAPER

Changes in regulation of housing and utility services in the draft laws No. 2458 and No. 4383: matters of intra-building gas supply networks and energy efficiency

On May 20, 2020, the Verkhovna Rada approved in principle the draft law amending certain laws of Ukraine to regulate certain aspects of housing and utility services (registration No. 2458¹). On December 3, 2020, this law was adopted. Besides, on November 16, 2020, a group of MPs introduced for consideration a draft law on procedure and timeframe for concluding agreements on providing utility services (registration No. 4383²).

The purpose of these amendments to the legislation is to regulate the matters of implementation of the Laws of Ukraine “On Housing and Utility Services” and “On Commercial Metering of Heat and Water Supply”, in particular the two critical issues: procedure of maintenance of intra-building gas supply networks and commercial metering of heat consumption.

Regarding the procedure of **maintenance of intra-building gas supply systems**, the Law “On Housing and Utility Services” separates maintenance services from gas distribution services, thus enabling conclusion of not only individual agreements, but also collective agreements and agreements with a collective consumer on the said services. At the same time, the Law defines solely gas distribution systems operators (hereinafter – DSOs) as providers of maintenance services, along with the provisions that allow other legal entities to provide these services on contractual terms. Furthermore, the practice of the Law implementation has shown that the absence of a competitive market and regulation of intra-building networks maintenance has resulted in disconnection of buildings from gas supply with a demand to enter into contracts with gas DSOs on ultimatum (non-negotiable) basis.

The draft laws No. 2458 and No.4383 suggested the following as possible solutions for this range of problems:

| Draft Law No. 2458 on regulation of certain issues in the sphere of providing housing and utility services | Draft Law No. 4383 on procedure and timeframe for entering into agreements on providing utility services |
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| <ul style="list-style-type: none"> Natural gas distribution services and intra-building networks maintenance services are to be provided solely on the basis of individual agreements, namely between a co-owner of an apartment building and a provider of the respective utility service. | <ul style="list-style-type: none"> Natural gas distribution services are to be provided, in the default mode, solely on the basis of individual agreements, without a provision on maintenance and minor repairs of intra-building systems by the service provider. |

¹ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=67418

² https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=70437

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| <ul style="list-style-type: none">• By May 1, 2021, the executive bodies of local councils are required to organize competitive selections of managers for apartment buildings whose residents have not decided on the form of management as of January 1, 2021.• Within two months after the effective date of the Procedure of Maintenance of Intra-Building Gas Supply Systems and Types of Mandatory Works (that are defined by MinEnergó), the NEURC is to develop and approve: a standard agreement on maintenance of intra-building gas supply systems in apartment buildings; a methodology of calculating the maximum cost of works and maintenance services for gas DSOs; the maximum costs of works and services included in the maintenance (with annual update).• Within one month after approval by the NEURC of the standard agreement and the maximum costs of works on maintenance, gas DSOs are required to publish on their websites the relevant public agreements and information about the estimated maintenance costs for every apartment building located within the area of licensed activity.• If an association of apartment building co-owners, a building manager or other authorized person does not apply to a gas DSO with a request to conclude the agreement on maintenance of intra-building gas supply systems and does not notify the latter on concluding such agreement with the other business entity, the apartment building co-owners shall be deemed to have joined the agreement with the gas DSO. In addition, a DSO cannot refuse to provide maintenance service if requested by apartment building co-owners.• A DSO shall distribute the estimated maintenance cost among the apartment building co-owners proportionally to the number of agreements concluded for that building and provide individual bills for maintenance service to consumers residing in that building. | <ul style="list-style-type: none">• By December 31, 2020, consumers in apartments buildings are required to choose one of the models provided for by the legislation for organization of contractual relations on intra-building networks maintenance: individual agreement that includes a provision on intra-building systems maintenance, a collective agreement or an agreement with collective consumer.• Providers of utility services may initiate concluding individual agreements by publishing a proposal on their own website to conclude an agreement (public offer). Acceptance of such an offer by a consumer are the actions that certify his/her desire to receive the relevant service, in particular making payment for the provided services.• Within two months after the effective date of the law, the NEURC is to determine the procedure for maintenance of intra-building gas supply systems in the Standard Agreement on Gas Distribution; and to set tariffs for gas DSOs taking into account the costs for maintenance. |
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We would like to emphasize that implementation of amendments envisaged by these draft laws poses a number of threats to a stable operation of the natural gas market and the housing and utilities sector of Ukraine as well as to the implementation of obligations under the EU-Ukraine Association Agreement.

- The version of Article 19 (3) of the Law of Ukraine “On Housing and Utility Services” that is proposed by the draft laws places the responsibility for maintenance and safe operation of intra-building gas supply systems on a gas DSO or other business entity subject to the respective agreement. This provision comes into conflict with Article 25 of the Directive 2009/73/EC on common rules for the internal market of natural gas, stating that only DSO shall guarantee the long-term ability of the gas supply system to meet reasonable demands for the distribution of gas, and for operating, maintaining and developing under economically acceptable terms a secure, reliable and efficient system in its licensed area, with due regard for the environmental protection and energy efficiency.

Therefore, empowering any other business entity to provide maintenance service for intra-building gas supply systems requires the development of licensing requirements and legal responsibility regulations for that business entity, as only then could the guaranteed obligations concerning service quality and reliability, including the management of consumers’ personal data, be duly fulfilled.

- The draft Law No. 4383 leaves unchanged the provisions of the Law “On Housing and Utility Services” on separation of maintenance services from gas distribution services, thus making impossible entering not only into individual agreements, but also into collective agreements or agreements with collective consumer on these services. This approach conflicts with legislation in gas sector, in particular the Law “On Gas Market” that defines consumer as an individual entity (natural or legal person) and gas distribution system as a technological complex for natural gas distribution from distribution stations directly to consumers. Moreover, exclusion of intra-building networks from gas distribution networks makes the execution of key DSO function – ensuring distribution of natural gas to consumer – impossible.
- The draft Law No. 2458, in its new version of Art. 19 of the Law “On Housing and Utility Services”, enables gas DSOs to unilaterally terminate an agreement on maintenance of intra-building gas supply systems if the debt exceeds the estimated service costs for six months. This provision comes into conflict with the provision of the same Article (in the version of the draft law), which states that a DSO cannot refuse to enter into an agreement on maintenance of intra-building gas supply systems in an apartment building. In addition, unilateral termination of the agreement contradicts the Law of Ukraine “On Housing and Utility Services”, which states that natural gas supply and distribution shall be ensured on a continuous basis and with a guaranteed level of safety and quality.
- The draft Law No. 2458 determines the right of a representative of DSO or other business entity to have access to the domicile for providing maintenance service for the intra-building gas supply systems. At the same time, the access procedure and the consequences of the owner’s (co-owners’) refusal to provide access are proposed to be legislatively regulated. This provision comes into conflict with Article 30 of the Constitution of Ukraine, which guarantees the inviolability of domicile for every citizen; urgent cases related to preservation of human life and property or to the direct pursuit of persons suspected of committing a crime, other procedures of entering a person’s domicile or other property, inspecting or searching thereof, determined by law, are allowed.

In the context of **heat consumption metering**, the Law “On Commercial Metering of Heat and Water Supply” defined that the only possible mechanisms of financing the installation and service of metering units are the contributions of co-owners to network operator (including payments in instalments) and state programs, – by excluding tariff-based financing of such measures. In accordance with item 2 of final and transitional provisions of the Law, it is required that by the end of June 2018, network operators equip all residential buildings with metering units and start charging contributions for installation, replacement and service of such units. Given the lack of financing and stimuli for heat supplying companies, the fixed time limits were predominantly exceeded, whereas item 1 of Article 14 (1) of the Law provides for penalties from August 1, 2020, at 1% of the charged payment for the last month for consumers with buildings not equipped with metering units.

The draft laws suggest the following as possible solution of this range of problems:

| Draft Law No. 2458 on regulation of certain issues in the sphere of providing housing and utility services | Draft Law No. 4383 on procedure and timeframe for entering into agreements on providing utility services |
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| <ul style="list-style-type: none"> • By August 1, 2022, operators of external engineering networks shall equip 100% of buildings with commercial metering units at the expense of the funds provided in investment programs or at the expense of the funds from the state budget. • Powers of setting tariffs on the supply of heat produced by a building-level autonomous heating system (taking into account maintenance and service costs) were transferred to the regulating authority for every business entity concerned (the NEURC or the local public authorities, respectively). In this case, the tariff is defined as a sum of tariffs for heat production, transmission and supply. • Within 6 months from effective date of the law, the government shall develop and submit to the Verkhovna Rada for consideration a draft law of Ukraine envisaging establishment of a central executive authority responsible for implementation of the public policy on government control (oversight) in housing and utilities sector. | <p>No provisions available.</p> |

We would like to emphasize that implementation of amendments envisaged by these draft laws poses a number of threats to a stable operation of energy efficiency programs, in particular the Energy Efficiency Fund, and implementation of international obligations of Ukraine.

- Final provisions of the draft Law No. 2458 provide for amendments to the Law “On Commercial Metering of Heat and Water Supply”, whereby the costs on equipping with building-level heat metering units will be included to the tariffs of network operators concerned, i.e. divided among all consumers of the network operator’s services. This approach may block the Energy Efficiency Fund (EEF) operations for 20% of heat consumers until at least August 2022, as the installation of meters is the fundamental

basic precondition for the EEF grants disbursement; in addition, it would create a precedent of double funding for the associations of apartment building co-owners which have already installed a metering unit at their own expense. The mentioned approach contradicts Articles 7 and 20 of the Directive 2012/27/EU on energy efficiency, which is aimed to support and incentivize the co-owners' initiative of achieving substantial savings in consumption.

- The obligation of the Cabinet of Ministers, included in the final provisions of the draft Law No. 2458, to develop and submit to the Verkhovna Rada for consideration a draft Law of Ukraine envisaging establishment of a central executive authority for implementation of the public policy on government control (oversight) in housing and utilities sector was included in the text of the draft law while it was being prepared for the second reading. These changes are not compliant with the requirements of paragraph one of Article 116 (1) of the Law "On the Rules of Procedure of the Verkhovna Rada of Ukraine". Moreover, the proposed form of implementing government control (oversight) as a central executive authority requires additional justification, given the absence of any mentions of the need for, or the role of, that authority in the respective matters of draft law.

Given this, DiXi Group experts recommend MPs and other entities with the right of legislative initiative to:

1. **Empower the NEURC** as a central executive authority with special status **to ensure licensing, pricing and contractual regulation of activities of the providers of maintenance services for intra-building gas supply systems** to ensure continuous, safe and high-quality delivery of gas supply and distribution services.
2. Standardize the interaction of consumers and providers of maintenance services for intra-building systems (as a part of gas distribution network) on the basis of **individual agreements**, define the **regulations of civil and economic liability for providers of services** for maintenance of gas supply systems.
3. Develop **tariff incentive mechanisms for apartment building co-owners to equip, on their own initiative, their buildings with commercial metering units**; or to improve the approach proposed by the draft law No. 2458 to reimbursing expenses of the operators of external engineering networks by means of excluding consumers who have already installed, or are going to install, a metering unit themselves from the list of payers.
4. Develop legislative amendments enabling the **settlement of debt owed to gas DSOs using civil law mechanisms which do not require interruption of gas supply** as well as other threats for providing safe and high-quality services on gas supply and distribution.
5. Develop a separate draft law on the government control (oversight) in housing and utilities sector, based on analysis of the **ways to optimize the powers of authorities responsible for consumers' rights protection in utility services**.