

# ENERGY REFORMS:

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

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

The key objectives of the project are:

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

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Picture on the cover: <https://www.youtube.com/watch?v=brCk0TLw0wk>

# Executive Summary

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Experts of the **gas sector** noted the lack of the adopted laws on the relevant issues. Registered legislative initiatives concerned investments in gas production and unblocking the regulator's activities. In addition, the government appointed members of the supervisory board of Naftogaz, having cancelled competitive selection. The intensity of the conflict between these parties on the restructuring of Naftogaz has somewhat decreased.

In the **electricity sector**, the government has adopted a decision on the corporatisation of Ukrenergo. Experts note the ongoing activity of the Coordination Center for the Introduction of a New Electricity Market in Ukraine, as well as the start of development of the concept for smart grids roll-out in Ukraine. Although the situation with the accumulation of coal stocks has improved, there is still lagging behind the plan. The experts drew attention to a number of important events in the nuclear industry.

Experts from the **Energy Efficiency and Social Issues** Target Group highlighted again the inaccessibility of many draft by-laws for public examination and discussion. These are the documents being drafted to implement a series of laws in the field, which were recently adopted by MPs. It is their representatives who helped the experts give insight into what exactly and in what pace the work in this area is being done.

The **Environment and Renewable Energies** Target Group welcomes the adoption of the Waste Management Strategy and the National Plan for Reducing Emissions from Large Combustion Plants. At the same time, experts note the rejection of the draft Law on Strategic Environmental Assessment and by-laws to the Law on Environmental Impact Assessment. In addition, Ukraine has finally joined the IRENA international agency.

Experts in the **oil and oil products** sector complain about the lack of a published official text of the adopted Action Plan for the Implementation of the Association Agreement, as well as analyse the legislative initiative on gradual increase in the content of bio-components in oil products, support the acceleration of the deadlines for fulfilling a part of commitments, but are still concerned about the delay in the implementation of directives on reducing sulphur content in certain types of liquid fuels, as well as on the quality of petroleum and diesel fuel.

In the **business climate** sphere, experts drew attention to the loss of quorum by the regulator, attempts to resume its activity, as well as the start of the work of the Competition Commission for the selection of new NEURC members. Given its importance for the energy sector, the crisis of the regulator has affected many energy sub-sectors and has played an important role for investors. Despite the patriotic name, the draft law "Buy Ukrainian, Pay to Ukrainians", according to experts, not only violates the logic of the Association Agreement, but also endangers the successful ProZorro system.

**CMU** – Cabinet of Ministers of Ukraine

**CcSUP** – Complex (Consolidated) Safety Upgrade Program of Power Units of Nuclear Power Plants

**DHC** – District Heating Company

**EIA** – Environment Impact Assessment

**EMO** - Electricity Market Operator

**FEC Committee** - Committee on Fuel and Energy Complex, Nuclear Policy and Nuclear Safety

**GDS** – Gas Distribution System

**GTS** – Gas Transportation System

**KhNPP** – Khmelnytskyi NPP

**LNG** – Liquefied Natural Gas

**MECI** – Ministry of Energy and Coal Industry

**NAK** – National Joint Stock Company Naftogaz of Ukraine

**NEURC** – National Energy and Public Utilities Regulatory Commission

**SEA** – Strategic Environmental Assessment

**SNRIU** - State Nuclear Regulatory Inspectorate of Ukraine

**TPP** – Thermal Power Plant

**TSO** – Transmission System Operator

**UES** – United Energy System of Ukraine

**VRU** – Verkhovna Rada of Ukraine

**WEM** - Wholesale Electricity Market



During November, MPs did not consider any legislative act on gas issues. However, draft laws related to conditions of attraction of investments in upstream and overcoming the crisis in the regulator's activities caused by a loss of the NEURC quorum were introduced to the VRU.

With the aim of ensuring the successful passage of the 2017/18 heating season, the government has made efforts in settlement of accounts between heat supply market participants (including those related to gas debts). In addition, the government abolished the competitive selection of candidates to positions of independent members of the supervisory board of Naftogaz and appointed a new composition of the supervisory board.

According to Ukrtransgaz JSC, the volume of gas transit to Europe, starting from January 2017 until mid-November, was a record for the last 7 years and exceeded 80.8 bcm. Meanwhile, the European Commission and a member of the EU - Denmark - have taken actions aimed at controlling the Russian export pipeline Nord Stream 2 in case of its implementation.

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

The VRU registered the draft law No. 7321<sup>1</sup> related to the issue of attracting investment in the oil and gas extraction sector. In order to stimulate investment in mining from fields with hard-to-extract (more than 70% reserves in Ukraine are of this type) and depleted reserves, the authors of the draft law proposed to introduce the concept of baseline and over-baseline volumes of hydrocarbon production from such fields, and, on the basis of establishment of the value of these baseline volumes by the Cabinet of Ministers, to tax the extracted volumes that exceed baseline ones at a rate 2% of the value.

In November, the Verkhovna Rada adopted the Law on Housing and Communal Services, which partially regulates the natural gas supply and distribution services. In particular, the document stipulates that such services shall be provided "exclusively on the basis of individual contracts", and DSOs shall carry out technical maintenance of in-house gas-supply systems in residential buildings. In addition, repair works shall be carried out at the expense of (co-)owners of buildings. The law also stipulates that a gas supply contract shall be concluded only if a consumer (or his supplier) has a gas distribution contract with the relevant DSO.

Meanwhile, the Cabinet of Ministers has rendered an innovative decision in the area of improving payments for the produced heat: from 1 January 2018, monetization of settlements under subsidies at the level of enterprises providing heat supply services will take place<sup>2</sup>. Due to this decision, enterprises producing heat will be able to receive funds under subsidies that will facilitate the settlement system and, according to the government's intention, will help DHC enterprises out of "hostages of NSJSC Naftogaz"<sup>3</sup>. Because their current dependence on accumulated debts (the overdue amount of which to the NAK has reached UAH 21 bn as of November 29<sup>4</sup>) negatively affects the receipt of nominations and supply of gas to them. At the moment, the government has included 185 enterprises in the register of debt restructuring (stipulated by the law No. 1730-VIII), another 7 are in the process of inclusion, 32 are in the process of

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<sup>1</sup> [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?id=&pf3511=62938](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=62938)

<sup>2</sup> [http://www.kmu.gov.ua/control/uk/publish/article?art\\_id=250405018&cat\\_id=244274160](http://www.kmu.gov.ua/control/uk/publish/article?art_id=250405018&cat_id=244274160)

<sup>3</sup> [http://www.kmu.gov.ua/control/uk/publish/article?art\\_id=250404780&cat\\_id=244276429](http://www.kmu.gov.ua/control/uk/publish/article?art_id=250404780&cat_id=244276429)

<sup>4</sup> <http://www.naftogaz.com/www/3/nakweb.nsf/0/E5E29918296E88B3C22581E70034B42E?OpenDocument&year=2017&month=11&nt=%D0%9D%D0%BE%D0%B2%D0%B8%D0%BD%D0%B8&>

consideration<sup>5</sup>. It is expected that after fulfilling the restructuring schedules (UAH 8.7 bn – for 5 years), the government will write off UAH 6 bn debt of DHS enterprises to Naftogaz.

On November 10, the government resolved the problem of electing the Supervisory Board of NJSC Naftogaz of Ukraine, by adopting a decision to modify the procedure for appointing its members (Resolution No. 871<sup>6</sup>). The amendments to a number of regulatory legal acts provide for the election of members of the company's supervisory board in a short time. This gave an opportunity to the Cabinet of Ministers to approve a new composition of the Supervisory Board of Naftogaz at the end of the month<sup>7</sup>. It includes: C.Spottiswoode (UK), B.Lescoeur (France), A.Hochstein (USA), S.Haysom (Canada), and also O.Hrytsenko<sup>8</sup>, S.Popyk and V.Demchyshyn (all - Ukraine ) Thus, the government has resumed the capacity to function of the supervisory board of the NAK.

In parallel, the Ministry of Energy and Coal Industry, taking into account changes in the procedure for the selection of an independent member of the supervisory board of the state unitary enterprise regarding the extension of the deadline for submission of applications for a competition (resolution No. 867<sup>9</sup>), and on the basis of the Minutes No. 4 of 17.11.2017 of the meeting of the competition commission, announced the prolongation of the deadline for receipt of documents for competitive selection for the post of an independent member of the supervisory board of Mahistralni Gazoprovody Ukrainy (MPU) till 15 December 2017<sup>10</sup>.

On November 22, at the government meeting, the Vice Prime Minister V.Kistion presented a new Concept of Ukraine's energy independence<sup>11</sup>. Its main milestones are the creation of an international gas hub, the preservation of transit, and the growth of domestic production with a focus on Ukrainian gas exports.

At the end of November, Naftogaz submitted a draft financial plan for 2018 for approval by the Cabinet of Ministers<sup>12</sup>. According to the media, this plan provides for net income – UAH 35.1 bn, gas imports - 8.94 bcm at the weighted average price of USD 271.58 per tcm (of which 3.8 bcm are intended for the needs of the population and DHC), the purchase of 14.6 bcm of gas extracted in Ukraine, as well as the transfer of transit functions of MGU in July 2018<sup>13</sup>. Some indicators of the plan caused comments by the Ministry of Finance. According to media sources in the government<sup>14</sup>, this action by the NAK was initiated by the issue by the Cabinet of Ministers of repeated official instruction on such filing on November 8. For the first time, the government adopted a decision to finalize the financial plan of Naftogaz for 2017 and submit the financial plan for 2018 for the approval six months ago, but this instruction was not implemented in time (according to the Commercial Code, the financial plan for the next year should be approved by the Cabinet of Ministers by September 1 of the current year).

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<sup>5</sup> [http://www.kmu.gov.ua/control/uk/publish/article?art\\_id=250434239&cat\\_id=244276429](http://www.kmu.gov.ua/control/uk/publish/article?art_id=250434239&cat_id=244276429)

<sup>6</sup> <http://zakon2.rada.gov.ua/laws/show/871-2017-%D0%BF/paran2#n2>

<sup>7</sup> <http://www.naftogaz.com/www/3/nakweb.nsf/0/F3A3383187EAACBC22581E0004BA785>

<sup>8</sup> There are problems with appointment of O. Hrytsenko, as he holds the position of the Chairman of the Management Board of Ukreximbank

<sup>9</sup> <http://www.kmu.gov.ua/control/uk/cardnpd?docid=250432420>

<sup>10</sup> [http://www.kmu.gov.ua/control/uk/publish/article?art\\_id=250440940&cat\\_id=247229077](http://www.kmu.gov.ua/control/uk/publish/article?art_id=250440940&cat_id=247229077)

<sup>11</sup> [http://www.kmu.gov.ua/control/uk/publish/article?art\\_id=250444219&cat\\_id=244276429](http://www.kmu.gov.ua/control/uk/publish/article?art_id=250444219&cat_id=244276429)

<sup>12</sup> <https://ukranews.com/news/533084-neftegaz-podal-na-utverzhenye-kabmyrna-proekt-fynplana-na-2018-s-chystoy-prybylyu-351-mlrd-gryven>

<sup>13</sup> <https://ukranews.com/news/533081-neftegaz-planruet-peredat-funkcyi-tranzhyta-magystralnym-gazoprovodam-ukrayny-s-yyulya-2018>

<sup>14</sup> <https://www.epravda.com.ua/news/2017/11/8/630977/>

Since December 1, Naftogaz has again increased gas prices for industrial and other consumers<sup>15</sup>, which are not subject to the Regulation on the Public Service Obligations - by 2.3-2.4% compared to November 2017 prices. According to the new price list<sup>16</sup>, the price of gas as a commodity (including VAT) as of 1 December 2017 is set at the following levels: for monthly gas needs of up to 50 tcm inclusive, non-regulated monthly needs and monthly needs of 50 tcm without prepayment - UAH 9,918.0 per tcm; for monthly needs from 50 tcm, on condition of prepayment<sup>17</sup> - UAH 9,019.2 per tcm (the same price level - UAH 9,019.2 per tcm - is established for subsidiaries founded by Naftogaz, 100% of the authorized capital of which are owned by the company).

**Regulation (EC) No. 715/2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No. 1775/2005 (Art. 338, 341 Annex XXVII of the AA) in accordance with Art. 278 of the AA, trade issues (Art. 269-274 of the AA):**

In November, the conflict between the government and Naftogaz's leaders decreased as part of the process of restructuring of NJSC Naftogaz of Ukraine to separate the gas transportation function.

Against the background of the deployment of the TSO newly established by Naftogaz as a branch in the structure of Ukrtransgaz, the company gained the support of the Director of the Energy Community Secretariat J.Kopac, who positively assessed the allocation of the function of the transport operator to a separate business unit of Ukrtransgaz PJSC with its subsequent transfer to MGU<sup>18</sup>. In his opinion, in addition to further implementation of the unbundling, the problems of liberalization of the gas supply to the population remain unresolved<sup>19</sup>.

According to the results of the month, Naftogaz reported completion of the preparatory phase of the separation of the transportation function<sup>20</sup>. According to the company<sup>21</sup>, "several tens of thousands of assets needed for gas transportation", corresponding employees are concentrated and business processes are organized in the Ukrtransgaz branch "TSO of Ukraine" (TSOU). For the first month of autonomous operation of the TSOU, Ukrainian and foreign consumers were provided with services for the transportation of over 12 bcm of gas. In addition, at this stage, an updated list of assets was created for the transfer to the new TSO. According to a press release<sup>22</sup>, this list and Naftogaz's position regarding the property, which should be transferred at the first stage of separation, was sent to the CMU (for approval) and the Ministry of Energy and Coal Industry.

At the same time, according to Ukrtransgaz<sup>23</sup>, on 1 December 2017, the UTSO branch became "a functionally self-sufficient structural unit with an approved organizational structure and staff schedule".

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<sup>15</sup> <http://www.naftogaz.com/www/3/nakweb.nsf/0/6134FA9F5F710652C22581DF0027D5CD?OpenDocument&year=2017&month=11&nt=%D0%9D%D0%BE%D0%B2%D0%B8%D0%BD%D0%B8&>

<sup>16</sup> <http://www.naftogaz.com/files/Information/Naftogaz-gas-prices-ne-PSO-Dec-2017.pdf>

<sup>17</sup> Payment during the calendar month preceding the gas supply month

<sup>18</sup> <http://www.naftogaz.com/www/3/nakweb.nsf/0/E192585761D1BA20C22581D7002E2D29?OpenDocument&year=2017&month=11&nt=%D0%9D%D0%BE%D0%B2%D0%B8%D0%BD%D0%B8&>

<sup>19</sup> Ibid.

<sup>20</sup> As determined by the CMU Resolution No. 496, the final separation will take place in 30 days after entering into force of the decisions of the Arbitration Institute of the Stockholm Chamber of Commerce, at the same time, on November 9, their adoption was postponed to the end of December 2017 and February 2018

(<http://www.naftogaz.com/www/3/nakweb.nsf/0/EC7EB30A3201A279C22581D800525D17?OpenDocument&year=2017&month=11&nt=%D0%9D%D0%BE%D0%B2%D0%B8%D0%BD%D0%B8&>)

<sup>21</sup> <http://www.naftogaz.com/www/3/nakweb.nsf/0/3420F600CAD0E9FFC22581E90063B728?OpenDocument&year=2017&month=12&nt=%D0%9D%D0%BE%D0%B2%D0%B8%D0%BD%D0%B8&>

<sup>22</sup> Ibid.

<sup>23</sup> <http://utg.ua/utg/media/news/2017/11/01-11-2017-gts-operator-launched.html>

Thus, conditions were created not only to ensure the transportation of gas through the territory of Ukraine, but also for the further certification of the TSO, in accordance with European norms.

Meanwhile, the Ministry of Energy and Coal Industry published the draft Order on Approval of the Rules for Access of Natural Gas Market Entities to Internal Industrial Pipelines of Related Gas Producing Enterprises<sup>24</sup>. The document is prepared for the implementation of Article 56 of the Law on the Natural Gas Market and aims at eliminating barriers for related gas producing enterprises in their activities to provide gas transportation services and payment for these services. The rules are intended to regulate issues that are not regulated by the GTS and GDS codes, in particular, to grant access rights to internal industrial pipelines to gas market entities as customers of relevant gas transportation services, to determine the cost of access and transportation of gas.

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

According to Ukrtransgaz, the volume of transit of Ukrainian GTS of this year as of November 13 reached a top record level for 7 years and amounted to 80.8 bcm<sup>25</sup> (for November, Ukraine actually transported 8.1 bcm<sup>26</sup>). With the contractual pressure of 60-65 kgf/cm<sup>2</sup>, the average pressure at the entrance to the Ukrainian GTS from Russia (Sudzha metering station) was only 56 kgf/cm<sup>2</sup> for 277 days, and in early November dropped to 52-54 kgf/cm<sup>27</sup>. Only after reporting of the full-time monitoring group of the European Commission of it, since 07.11.2017, Gazprom has recovered the contractual pressure value. Thus, despite the violation by Gazprom of technical obligations under the transit contract for compliance with gas pressures, Ukraine continues to reliably ensure the transit of the Russian gas to Europe.

The Gazprom's implementation of the bypass gas pipeline project across the Baltic Sea - Nord Stream 2 still threatens the fulfilment of the Ukraine's transit role. The prospects for the construction of this gas pipeline today are most influenced by the positions of the European Union and the United States that have adopted sanctions against Russia. In particular, new US sanctions, which entered into force on November 28<sup>28</sup>, increase the restrictions on financing Russian export gas pipelines<sup>29</sup>. The situation on the part of the EU is outlined by the recently announced real possibility to legislatively regulate restrictions on the operation of the offshore gas pipelines through the extension of the rules of the EU internal gas market for such gas pipelines by the end of 2018<sup>30</sup>. Subject to the adoption of the amendments proposed by the European Commission to the EU Gas Directive (2009/73/EC)<sup>31</sup>, all gas pipelines for gas import will be able to operate exclusively under the EU rules, namely: they will not be supplied directly to gas suppliers, will be operated with the same degree of transparency, at non-discriminatory tariffs, and will be available to other operators (at least 10% of capacity). Adopting and enacting these terms cannot prevent the construction of the Nord Stream-2, but will ensure, at least, the partial control of the European Commission over the management of this gas pipeline.

At the same time, opponents of the project in Europe (Poland, the Baltics, Denmark) continue to oppose its implementation. Thus, because of the objection of Denmark, today there is a danger of changing the route

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<sup>24</sup> [http://mpe.kmu.gov.ua/minugol/control/uk/publish/article?art\\_id=245255034&cat\\_id=35082](http://mpe.kmu.gov.ua/minugol/control/uk/publish/article?art_id=245255034&cat_id=35082)

<sup>25</sup> <http://utg.ua/utg/media/news/2017/11/gas-transit-via-ukraine-hits-80-bcm.html>

<sup>26</sup> <http://utg.ua/utg/media/news/2017/11/01-11-2017-gts-operator-launched.html>

<sup>27</sup> <http://utg.ua/utg/media/news/2017/11/gas-transit-via-ukraine-hits-80-bcm.html>

<sup>28</sup> <https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20171128.aspx>

<sup>29</sup> <https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20171128.aspx>

<sup>30</sup> <http://www.euractiv.com/section/energy/news/eu-plans-big-rule-change-to-snap-nord-stream-2/>

<sup>31</sup> [http://europa.eu/rapid/press-release\\_IP-17-4401\\_en.htm](http://europa.eu/rapid/press-release_IP-17-4401_en.htm)

and postponing the start of construction<sup>32</sup>. On November 30, the Danish Parliament adopted the law<sup>33</sup> authorizing the government to ban construction of pipeline projects based on security or foreign policy reasons. That is, if the Danish Ministry of Foreign Affairs considers that the pipeline is damaging to the Danish strategic interests or national security (previously, only the Danish Ministry of the Climate, Energy and Construction could block the construction and only for environmental reasons). The law will come into force on 1 January 2018. Thus, Denmark can ban the construction of the Nord Stream 2 in its territorial waters, which will result in the need to design a new route for it.

Military risks are still relevant for the operation of gas infrastructure. In particular, by a separate decision (Decree No. 873-p), the Cabinet of Ministers allocated UAH 35.744 mln to the Lugansk Regional State Administration for the elimination of the consequences of the emergency situation on the Lugansk-Lysychansk-Rubizhne main gas pipeline.

## ACQUIS UPDATE

On November 1, a new EU Regulation concerning measures to safeguard the security of gas supply entered into force. The new rules require EU Member States to work within regional groups to assess the potential for interruptions in gas supplies and to coordinate joint actions to prevent or mitigate the effects. In accordance with the new principle of solidarity, they will also have to help neighboring countries with gas supply to vulnerable consumers in the event of a shortage. This will reduce the risk of dependence on external sources. In addition, gas suppliers must officially notify governments about the main long-term contracts that may be relevant to the security of supply. The regulation also requires the European Network of Transmission System Operators for Gas (ENTSO-G) to simulate gas supply disruptions and infrastructure stops at the EU-wide level in order to provide an analysis of major supply risks for the EU.

On November 8, the European Commission made a legislative proposal to update Directive 2009/73/EC concerning common rules for the internal natural gas market. The aim of the amendments is to comply with the EU rules on transparency and access of other suppliers - all main gas pipelines entering the territory of the EU countries. This was preceded by a statement by the President of the European Commission J.-K. Juncker on September 13, which announced these amendments to adhere to the principles of solidarity of the Energy Union.

As explained in the accompanying explanation, the proposal should fill the gap with regard to the applicability of the requirements of the Third Energy Package to the transboundary gas pipelines entering the EU from third countries (vice versa). The European Commission did not give a direct answer whether these changes would stop the Nord Stream 2 project from being implemented or change its operation. It is noted that Nord Stream 2 cannot be implemented under conditions of legal uncertainty or exclusively in accordance with the legislation of a third country.

The updated directive will apply to both planned and existing gas pipelines - however, for existing facilities, governments may apply certain exceptions if they do not threaten competition, market functioning, and security of supply. As for the member countries of the Energy Community, in particular Ukraine, the application of such exceptions is not foreseen due to adaptation (including in the future) of the appropriate regulation.

<sup>32</sup> <https://www.platts.com/latest-news/natural-gas/milan/nord-stream-2-natural-gas-link-concedes-possible-26836477>

<sup>33</sup> <https://www.svoboda.org/a/28888086.html>



# Electricity and Nuclear Safety

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The Cabinet of Ministers allowed the transformation of the SE NPC Ukrenergo into PrJSC with 100% state-owned shares, which would accelerate the process of the TSO corporatization.

The MECI and Korean companies KEPCO and KOTRA signed the Memorandum on Cooperation in the Field of Electricity. At the end of November, the situation with the accumulation of coal reserves in the TPP and CHPP warehouses has improved considerably; however, there is still lagging by 24.4% of the rate of coal accumulation in warehouses in accordance with the schedule approved by the MECI.

The SNRIU extended the lifetime of the power unit No. 3 of the Zaporizhzhya NPP until 5 March 2027, and issued a license to the SE NNEGC Energoatom. The construction of the CSFSF of VVER reactors of nuclear power plants has started.

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

The regular meeting of the Coordination Center for Ensuring the Introduction of a New Electricity Market was held on November 17. It presented the system for monitoring the implementation of measures provided for by the Law on Electricity Market and the procedure for financing the Project Office<sup>34</sup>.

On November 3, the NPC Ukrenergo published the draft Transmission System Code and the Commercial Metering Code<sup>35</sup>. Ukrenergo will perform the functions of the transmission system operator in the future market.

The Law on Electricity Market provides for that, in the authorized capital of the TSO, the state shall own 100% of the shares that are not subject to privatization or alienation in any other way. Therefore, on November 22, the government decided to start the process of corporatization of the SE NPC Ukrenergo by transforming it into a PrJSC with 100% state-owned shares<sup>36</sup>. In order to continue the corporatization process, it is necessary to conduct an inventory of the property, estimate the value of the entire property complex and start the issue of shares<sup>37</sup>.

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

Starting from November 13, the NEURC had no quorum for decision making due to the illness of one of the 4 commissioners, and on November 27, he was dismissed by rotation by the Decree of the President of Ukraine. The regulator published a list of almost all the problems encountered by the NEURC in connection with the absence of a quorum, which by law shall be formed of not less than 4 persons out of 7<sup>38</sup>.

As of December 1, the NEURC's work in terms of the decision-making power remains blocked. The Verkhovna Rada will begin its session work only in December.

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

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<sup>34</sup> <http://kc.er.gov.ua/index.php/main/257>

<sup>35</sup> <https://ua.energy/media/pres-tsentr/pres-relyz/oprylyudneno-proekty-kodeksu-sistemy-peredachi-ta-kodeksu-komertsijnogo-obliku/>

<sup>36</sup> <https://ua.energy/osnovni-podiyi/uryad-uhvalyv-rishennya-pro-pochatok-korporatyzatsiyi-nek-ukrenergo/>

<sup>37</sup> [http://mpe.kmu.gov.ua/minugol/control/uk/publish/article?sessionId=754BBFC4AA30CBAE27900BFF2A58D0A9.app1?art\\_id=245256683&cat\\_id=35109](http://mpe.kmu.gov.ua/minugol/control/uk/publish/article?sessionId=754BBFC4AA30CBAE27900BFF2A58D0A9.app1?art_id=245256683&cat_id=35109)

<sup>38</sup> <https://www.slideshare.net/NKREKP/1324-2017?ref=http://www.nerc.gov.ua/?news=7055>

# Electricity and Nuclear Safety

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Within the framework of cooperation with the World Bank, the work on the development of the Smart Grid Implementation Concept in Ukraine by 2035 and the mid-term Smart Grid Implementation Plan in Ukraine started in the MECI<sup>39</sup>. In order to develop and harmonize the Concept and the Action Plan, it is planned to form working groups, which will include representatives of relevant central executive authorities, electricity market participants and energy experts<sup>40</sup>.

On November 21, the Memorandum on Cooperation in the Field of Electricity was signed between the MECI and Korean companies KEPCO and KOTRA, in particular in the areas of: exchange of information on the energy sector of each country; exchange of technologies in the Smart Grid areas, AMI (Advanced Infrastructure Measurement), SCADA (supervisory control and data acquisition), disconnection management and others; co-operation to reduce energy losses during its transmission and distribution<sup>41</sup>. This cooperation should contribute to the creation of the Smart Grid Concept in Ukraine and the preparation of the Action Plan for the Implementation Strategy in Ukraine until 2035.

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

According to the information published on November 22 by the State Statistics Committee of Ukraine in the report "Industrial Production in January-October 2017", the extraction of coal in Ukraine (excluding the temporarily occupied territory of the Crimea, Sevastopol and parts of the anti-terrorist operation area) in October 2017 amounted to 2 mln tons, which is by 25.9% less than in October 2016<sup>42</sup>. The total production for January-October 2017 dropped by 16.4% compared to the same period in 2016.

The companies are trying to resolve a problem of the G-grade coal shortage that emerged through imports. On November 4, a supply of the anthracite coal (75,000 tons) arrived from the South Africa<sup>43</sup> and on November 18, a supply of G-grade coal (75,000 tons) arrived from the U.S. for the DTEK thermal power plant<sup>44</sup>. On November 9, the third batch of coal (80 thousand tons) arrived from the U.S. for TsentrenergopijSC<sup>45</sup>.

As of November 30, the situation with the accumulation of coal reserves in the TPP and CHPP warehouses has improved comparing with the end of October. But there is still the lagging behind the rate of accumulation of coal in warehouses in accordance with the schedule approved by the MECI, as of this date is. Thus, the coal reserves in the TPP and CHPP warehouses amounted to 1,536.2 mln tons (which was 75.6% of the accumulation norm as of this date): anthracite coal - 645.1 thousand tons (which is 68.6% of the norm), G-grade coal - 891.1 thousand tons (which is 81.7% of the norm)<sup>46</sup>.

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

On November 3, the SNRIU Board decided<sup>47</sup> to extend the lifetime of the power unit No.3 of the Zaporizhzhya NPP until 5 March 2027<sup>48</sup>, and issued a license to the SE NNEGC Energoatom to carry out the activity at the stage of the life cycle "operation of the nuclear facility of the power unit No. 3 of the SS

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<sup>39</sup> [http://mpe.kmu.gov.ua/minugol/control/uk/publish/article?art\\_id=245251967&cat\\_id=35109](http://mpe.kmu.gov.ua/minugol/control/uk/publish/article?art_id=245251967&cat_id=35109)

<sup>40</sup> [http://mpe.kmu.gov.ua/minugol/control/uk/publish/article?art\\_id=245253369&cat\\_id=35109](http://mpe.kmu.gov.ua/minugol/control/uk/publish/article?art_id=245253369&cat_id=35109)

<sup>41</sup> [http://mpe.kmu.gov.ua/minugol/control/uk/publish/article?art\\_id=245256332&cat\\_id=35109](http://mpe.kmu.gov.ua/minugol/control/uk/publish/article?art_id=245256332&cat_id=35109)

<sup>42</sup> [http://www.ukrstat.gov.ua/express/expr2017/11/213\\_w.zip](http://www.ukrstat.gov.ua/express/expr2017/11/213_w.zip)

<sup>43</sup> <https://economics.unian.ua/energetics/2225724-do-ukrajini-pribulo-vosme-sudno-z-afrikanskim-vugillyam.html>

<sup>44</sup> <https://www.rbc.ua/ukr/news/ukrainu-pribyla-ocherednaya-partiya-uglya-151180211.html>

<sup>45</sup> <https://economics.unian.ua/energetics/2234919-do-ukrajini-pribula-tretya-partiya-amerikanskogo-vugillya.html>

<sup>46</sup> [http://mpe.kmu.gov.ua/minugol/control/uk/publish/article?art\\_id=245259055&cat\\_id=245183254](http://mpe.kmu.gov.ua/minugol/control/uk/publish/article?art_id=245259055&cat_id=245183254)

<sup>47</sup> <http://www.snrc.gov.ua/nuclear/uk/publish/article/379049>

<sup>48</sup> <http://www.energoatom.kiev.ua/ua/press/nngc/53140->

[kolegya\\_deriatomregulyuvannya\\_prodozjila\\_termn\\_ekspluatats\\_energobloka\\_zaporzko\\_aes/](kolegya_deriatomregulyuvannya_prodozjila_termn_ekspluatats_energobloka_zaporzko_aes/)

# Electricity and Nuclear Safety

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Zaporizhzhya NPP<sup>49</sup>. On November 6, the power unit No. 3 of the Zaporizhzhya NPP was connected to the electric grid<sup>50</sup>. On November 17, the commission consisting of the SNRIU representatives, the SSTC NRS and the SESU of Ukraine completed the inspection of the readiness of the power unit No. 3 of the Rivne NPP for operation in a stopped condition after the expiry of the project lifetime on 11 December 2017 and confirmed its readiness for operation in a stopped condition<sup>51</sup>. On November 30, the SNRIU Board approved a decision<sup>52</sup> that, subject to the completion of the Report on Periodic Reassessment of Safety and Implementation of the Measures Agreed upon with the SNRIU, the consideration of the issue regarding the Rivne NPP power unit lifetime extension at energy levels of capacity would be possible<sup>53</sup>.

As part of the implementation of the obligations to harmonize legislation with the Council Directive 2013/59/Euratom, on November 8, the Ministry of Justice registered the SNRIU Order No. 316/998 of 31.08.2017 On Approval of the Radiation Safety Rules for the Use of Ionizing Radiation Sources in Brachytherapy under No. 1362/31230<sup>54</sup>.

On November 9, the construction of the CSFSF of VVER reactors of nuclear power plants was formally launched. According to the MECI head, the CSFSF will save over USD 200 mln annually for the country, and, together with the diversification of nuclear fuel supplies, will help achieve full independence in the nuclear energy sector<sup>55</sup>.

On November 22, it was informed on the SNRIU website about the completion of the INSC U4.01/12BCD project on improving the emergency facilities and RAW management of special enterprises of the State Corporation UkrSA Radon, which was implemented within the framework of the European Commission's Instrument for Nuclear and Radiation Safety Cooperation (INSC). This project was aimed at improving the infrastructure and technical means of the Interregional Specialized Enterprises of the State Corporation UkrSA Radon, in particular, in the area of "historical" RW management and response to radiation accidents in the territories of the respective regions of Ukraine and the elimination of their consequences<sup>56</sup>.

**Art. 342, Chapter 1, Section V of the EU-Ukraine Association Agreement, Cooperation in the nuclear field. Cooperation is aimed at solving the problems caused by the Chernobyl accident and decommissioning of the Chernobyl NPP**

On November 1, the State Agency on Exclusion Zone Management informed that in order to implement the National Target Environmental Program on Radioactive Waste Management within the framework of ensuring the functioning of the radioactive waste management (RW) infrastructure at the Chernobyl Nuclear Power Plant and the Shelter facility, which provides for putting into operation of additional facilities at the Chornobyl NPP, an agreement with the contractor on the reconstruction of the part of the power house of the first stage of the ChNPP was signed in October to create a repository of high-activity waste obtained as a result of decommissioning the station. The work is planned to be completed in 2019<sup>57</sup>.

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<sup>49</sup> [http://www.energoatom.kiev.ua/ua/press/nngc/53149-energoatom\\_otrimav\\_novu\\_ltsenzuyu\\_na\\_ekspluatatsiyu\\_energobloku\\_zaporzko\\_aes/](http://www.energoatom.kiev.ua/ua/press/nngc/53149-energoatom_otrimav_novu_ltsenzuyu_na_ekspluatatsiyu_energobloku_zaporzko_aes/)

<sup>50</sup> [http://www.energoatom.kiev.ua/ua/press/nngc/53143-energoblok\\_zaporzko\\_aes\\_pdklyucheno\\_do\\_energomereji/](http://www.energoatom.kiev.ua/ua/press/nngc/53143-energoblok_zaporzko_aes_pdklyucheno_do_energomereji/)

<sup>51</sup> <http://www.snrc.gov.ua/nuclear/uk/publish/article/380188>

<sup>52</sup> <http://www.snrc.gov.ua/nuclear/uk/publish/article/380985;jsessionid=7E72FD02E9570B24379341787FBE5B2D.app2>

<sup>53</sup> [http://www.energoatom.kiev.ua/ua/press/nngc/53226-kolegija\\_derjatomregulyuvannya\\_viznala\\_mojilivim\\_rozglyad\\_pitannya\\_z\\_prodoivjennya\\_termnu\\_ekspluatatsiyu\\_energobloka\\_rivne\\_nsko\\_aes/](http://www.energoatom.kiev.ua/ua/press/nngc/53226-kolegija_derjatomregulyuvannya_viznala_mojilivim_rozglyad_pitannya_z_prodoivjennya_termnu_ekspluatatsiyu_energobloka_rivne_nsko_aes/)

<sup>54</sup> <http://zakon3.rada.gov.ua/laws/show/z1362-17>

<sup>55</sup> [http://mpe.kmu.gov.ua/minugol/control/uk/publish/article?art\\_id=245252948&cat\\_id=35109](http://mpe.kmu.gov.ua/minugol/control/uk/publish/article?art_id=245252948&cat_id=35109)

<sup>56</sup> <http://www.snrc.gov.ua/nuclear/uk/publish/article/380374>

<sup>57</sup> <http://dazv.gov.ua/novini-ta-media/vsi-novyny/z-2019-roku-mashinnij-zal-chaes-budut-vikoristovuvati-yak-skhovishche-dlya-zberigannya-visokoaktivnikh-vidkhodiv.html>

# Electricity and Nuclear Safety

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The construction of the New Safe Confinement (NSC) enclosing loop was completed at the ChNPP and, on November 8, an act was signed on the completion of construction and preparation for operation of the facility “Reinforcement and Sealing of ChNPP II Stage Building Structures Functioning as NSC Enclosing Loop”<sup>58</sup>.

On November 29, the acting Head of the State Property Fund V. Trubarov said<sup>59</sup> that the State Property Fund announced a tender for the selection of a valuation company, which would determine the cost of a part of the engineering structure of the cooling system of the ChNPP facilities. The given facility (the total area is 2,500 thousand square meters) is planned to be used for placement of a large solar power plant.

## ACQUIS UPDATE

In October, the Energy Community Secretariat published the Annual Report on the Implementation of European Energy Legislation. The Report states that Ukraine, in general, has adopted energy legislation that corresponds to the 3rd energy package, but implementation at the practical level has not yet taken place.<sup>1</sup>

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<sup>58</sup> <http://dazv.gov.ua/novini-ta-media/vsi-novyny/na-chaes-uspishno-zaversheno-budivnitstvo-ogorodzhuyuchogo-konturu-nbk-yake-trivalo-3-roki.html>

<sup>59</sup> [https://m.facebook.com/story.php?story\\_fbid=167331680676859&id=100022000840985](https://m.facebook.com/story.php?story_fbid=167331680676859&id=100022000840985)



# Energy Efficiency and Social Issues

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In the absence of public information to track progress in implementing energy efficiency laws, such work is being supported by MPs appeals, which are much more difficult to ignore than the information request of a civil society organization. Thus, according to information received from one of the MPs, it became known about the large-scale rule-making activity within the Ministry of Regional Development, only a small part of which is publicly available on the ministry's website. However, progress in the preparation and approval of numerous legal acts to implement the adopted laws is a significant achievement.

An important factor in accelerating the implementation of the Association Agreement between the EU and Ukraine is the consideration by the Cabinet of Ministers of an appropriate action plan, which remains unpublished, but according to unofficial information, 2016 tasks and about 5 thousand measures are expected. It is very likely that this document will be finalized and published before the end of 2017. It is expected that this Action Plan will replace all current implementation plans of individual EU acquis, as well as adjusted timeframes for such work.

## **Directive 2012/27/EC on energy efficiency**

The draft Law on Energy Efficiency<sup>60</sup>, the main developer of which is the State Agency on Energy Efficiency and Energy Saving, is currently lodged for approval by certain central executive bodies, according to the Ministry of Regional Development. In accordance with the regulatory requirements, after the coordination of all its provisions, the draft law will be sent to the Ministry of Justice for a legal opinion. After this, the draft law must be approved by the relevant governmental committee, approved by the decision of the Cabinet of Ministers, and only then must be submitted for registration by the Verkhovna Rada. Given the fact that such project approvals, not to mention the possible need for revision, will require additional time, the probability of its approval by the government in 2017 is extremely low.

On 11 November 2017, during the consideration of MPs in the repeated second reading, the Law on Housing and Communal Services (Reg. No. 1581-д) was also adopted by 262 votes. Already on November 17, the law was signed by the Chairman of the Verkhovna Rada and signed by the President. Unfortunately, the final text of the draft law is not publicly available yet, but based on the last available version of the draft, it can be stated that its adoption will allow settling relations arising in the process of providing and consumption of housing and communal services<sup>61</sup>. In particular, the law ensures the equality of parties of all legal relations in the area of providing communal services, clarifies the means of protecting consumers and managers of associations of co-owners of multi-apartment buildings, establishes qualification requirements for such managers, etc. Consolidation of the requirements for the provision of state aid to the least protected consumers in a targeted and in cash form at the legislative level will be the extremely important provision of the law (subject to the preservation in the voted text) will be the. However, it should be noted that this rule will enter into force only from 1 January 2019.

## ***Energy audits and energy management systems (Article 8)***

The government's decree concerning approving the action plan for introducing the energy management system in budgetary institutions begins to be implemented at the local level. For example, an interdepartmental working group under the Pereyaslav-Khmelnitskyi City Council was set up to implement the energy management system in budget institutions of the city, which included representatives of relevant local enterprises and the public sector<sup>62</sup>. In general, the execution of the above-mentioned instruction is quite systematic in the Kyiv region, in particular, in accordance with the instructions of the Kyiv Regional State Administration, local councils, including the city of Fastiv, implement an automated system called "Energy-Efficient Kyiv Region"<sup>63</sup>.

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<sup>60</sup> <http://www.minregion.gov.ua/wp-content/uploads/2017/09/Proekt-Zakonu-Ukrayini1.pdf>

<sup>61</sup> [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=57371](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=57371)

<sup>62</sup> <http://phm.gov.ua/?p=17224>

<sup>63</sup> <http://peremoga-fastiv.com.ua/novini-kijivshchini/5454-kijivshchina-na-shlyakhu-do-energoefektivnosti>

# Energy Efficiency and Social Issues

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## ***Metering (Article 9)***

The implementation of the Law on Commercial Metering of Thermal Energy and Water Supply is currently dependent on the state regulation of the relevant mechanisms through the approval of subordinate legislation. According to the information received in response to a request from a MP, the Ministry of Regional Development as responsible for this work has already developed the following draft acts (and some are also published for public discussion on the official site):

### Draft orders of the Ministry of Regional Development:

- On approval of the Methodology for Determining the Amount of Contributions for the Establishment, Maintenance and Replacement of Commercial Metering Units and their Distribution among Consumers of Communal Services, Owners (Co-owners) of Premises Equipped with Individual Heating and/or Hot Water Supply Systems<sup>64</sup>;
- On approval of the Procedure for Equipping Separate Premises in Buildings with Distributing Metering Units/Heat Energy Distributing Devices and Equipment of Engineering Systems to Ensure Such Accounting (the draft act was developed and prepared for submission to the interested central executive authorities for approval);
- On approval of the Procedure for Acceptance of the Metering Device for Registration of the Consumer (the draft act was developed and prepared for submission to the interested central executive authorities for approval);
- On Approval of the Methodology of Distribution among Consumers of Volumes Consumed in a Communal Services Building (draft act is being developed);
- On approval of the Methodology for Determining and Calculating Correction Coefficients for the Distribution of the Amount of Heat Energy Consumed Among Individual Consumers (in Conner Apartments (Premises), Apartments (Premises) Located on the Ground and Last Floors of Buildings, etc. - the draft act is being developed;

### Draft resolutions of the Cabinet of Ministers:

- On Approval of the Procedure for Transferring Contributions by a Communal Service Provider to an External Engineering Networks Operator for the Installation, Maintenance and Replacement of Commercial Metering Units<sup>65</sup>;
- On approval of the Procedure for Informing Building Owners (Co-owners) by the External Engineering Networks Operator about the Intention of Installing a Commercial Metering Unit (the draft act was developed and submitted to the Ministry of Justice for legal expert examination)<sup>66</sup>;
- On approval of the Procedure for Transferring Payments Paid by Consumers for the Installation of a Commercial Metering Unit to the External Engineering Networks Operator by a Communal Service

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<sup>64</sup> <http://www.minregion.gov.ua/base-law/grom-convers/informatsiyni-povidomlennya-pro-provedennya-publichnogo-gromadskogo-obgovorennya-grom-convers/rozpochato-gromadske-obgovorennya-proektu-nakazu-minregionu-pro-zatverdzhennya-metodiki-viznachennya-rozmiru-vneskiv-za-vstanovlennya-obslugovuvannya-ta-zaminu-vuzliv-komertsijnogo-obliku-ta-yih-ro/>

<sup>65</sup> <http://www.minregion.gov.ua/base-law/grom-convers/informatsiyni-povidomlennya-pro-provedennya-publichnogo-gromadskogo-obgovorennya-grom-convers/rozpochato-gromadske-obgovorennya-proektu-postanovi-kabinetu-ministriv-ukrayini-pro-zatverdzhennya-poryadku-pererahuvannya-vikonavtem-komunalnoyi-poslugi-operatoru-zovnishnih-inzhenernih-merezh-vne/>

<sup>66</sup> <http://www.minregion.gov.ua/base-law/grom-convers/informatsiyni-povidomlennya-pro-provedennya-publichnogo-gromadskogo-obgovorennya-grom-convers/rozpochato-gromadske-obgovorennya-proektu-postanovi-kabinetu-ministriv-ukrayini-pro-zatverdzhennya-poryadku-informuvannya-operatorom-zovnishnih-inzhenernih-merezh-vlasnikiv-spivvlasnikiv-budivli-p/>

# Energy Efficiency and Social Issues

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Provider who is not the Operator of the Corresponding External Engineering Networks (the draft act was developed and submitted to the central executive authorities concerned for approval);

- On Approval of the Procedure for Determining the Technical Capacity of Installing Heat Energy Distributive Metering Units and the Economic Expediency of Installing Heat Energy Distributive Metering Units (the draft act was developed and submitted to the central executive authorities concerned for approval);
- On approval of the Procedure for Monitoring the State of Equipment with Commercial Metering Units and the Procedure for the Exchange of Information between the Body Monitoring the State of Equipment with Communal Services Commercial Metering Units and the Body Authorized to Make Decisions on Prosecution for Violations (the draft act was developed and submitted to the central executive authorities concerned for approval).

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

The popularization of the main tasks of the state policy in the sphere of energy saving and energy efficiency is constantly carried out by representatives of the State Agency on Energy Efficiency and Energy Saving and aimed at implementation of energy saving measures in the housing stock and budget buildings. During November 2017, the State Agency on Energy Efficiency and Energy Saving, together with the GIZ project “Energy Efficiency Reform of Ukraine” and the Representative Office of the F. Ebert Foundation in Ukraine presented the benefits of implementing energy management in budget facilities in Chernivtsi<sup>67</sup>, Ternopil<sup>68</sup> and Sumy<sup>69</sup> Regional State Administrations.

In addition, within the framework of the International Investment Business Forum, the Head of the Agency presented a mechanism to stimulate energy-intensive enterprises to increase energy efficiency, namely one of the forms of carbon tax<sup>70</sup>.

## ***Energy Service Market (Article 18)***

Among the positive developments in the energy services market, it should be noted that the successful auctioning for the energy service procurement in the PROZORRO electronic procurement system, which took place on 30 November 2017, was successfully conducted. Sumy became the first city to test new procurement procedures. The local government has approved the essential terms of the energy service contract, which will result in energy efficiency measures being introduced at the specialized school No. 10 in Sumy<sup>71</sup>. It should also be noted that 95 tenders have already been announced in the electronic procurement system as of today.

More details on the progress of procurements can be found in the online mode of the PROZORRO, where in the Procedure section, a special “open tenders for the energy service procurement” tab was created<sup>72</sup>.

## ***National Energy Efficiency Fund, Financing and Technical Support (Article 20)***

Despite the numerous facts of assurances of the representatives of the Ministry of Regional Development on active work on drafting regulatory legal acts, aimed at implementing the Law on the Energy Efficiency Fund, as of the end of November, the official website of the department lacks information on their public discussion.

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<sup>67</sup> <http://saee.gov.ua/uk/news/2056>

<sup>68</sup> <http://saee.gov.ua/uk/news/2048>

<sup>69</sup> <http://saee.gov.ua/uk/news/2037>

<sup>70</sup> <http://saee.gov.ua/uk/news/2069>

<sup>71</sup> <http://saee.gov.ua/uk/news/2078>

<sup>72</sup> <https://prozorro.gov.ua>

# Energy Efficiency and Social Issues

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Instead, the Vice Prime Minister G. Zubko noted that for implementation of the Law on the Energy Efficiency Fund until March 2018, it is necessary to adopt 9 regulatory legal acts<sup>73</sup>. The lack of official information on the status of the approval of by-laws that are likely under development is raising public doubts about their adoption by March 2018, since, according to regulatory requirements, approval of the government's or ministry's draft acts takes about 3 months.

At the same time, the information received from the Ministry of Regional Development at the request of one of MPs clarified the status of development of a number of documents. In particular, the ministry reported that:

- Draft Resolution of the Cabinet of Ministers On the Establishment of the State Agency Energy Efficiency Fund - the draft act was developed, the legal expert opinion of the Ministry of Justice is being expected;
- Draft Resolution of the Cabinet of Ministers On Approval of the Methodology for Calculating Energy Savings as a Result of Implementation of Energy Efficiency Measures Funded by the State Agency Energy Efficiency Fund - the draft act was developed and submitted for approval to the central executive authorities concerned;
- Draft Resolution of the Cabinet of Ministers On Approval of the Regulation on the Supervisory Board of the State Agency Energy Efficiency Fund - the draft act was developed and submitted to the Ministry of Justice for legal expert examination;
- Draft Resolution of the Cabinet of Ministers On Approval of the Procedure for the Election, Appointment, Dismissal of the Members of the Supervisory Board of the State Agency Energy Efficiency Fund - the draft act was developed and submitted for approval to the central executive authorities concerned;
- Draft Resolution of the Cabinet of Ministers On Approval of the Model Form of a Contract with an Independent Member of the Supervisory Board of the State Agency Energy Efficiency Fund - the draft act was developed and submitted for approval to the central executive authorities concerned;
- Draft Resolution of the Cabinet of Ministers On the Requirements to Professional Competence and Business Reputation of Officers of the State Agency Energy Efficiency Fund - the draft act was developed and submitted for approval to the central executive authorities concerned;
- Draft Resolution of the Cabinet of Ministers On Approval of the Procedure for Determining the Amount of Costs Savings for the Financing of Housing Subsidies to the Population for Payment for Electricity, Natural Gas, Heat, Water and Wastewater Disposal Services, Housing Fees (Maintenance of Buildings and Structures and Adjacent territories), Removal of Household Waste and Liquid Sewage - the draft act was developed and is being prepared for submission for approval to the central executive authorities concerned;
- draft decree of the Cabinet of Ministers On Approval of the Main Areas of Activity of the State Agency Energy Efficiency Fund - the draft act was developed and sent for approval to the central executive authorities concerned;
- draft resolution of the Cabinet of Ministers On Approval of the Procedure for Using the Funds Provided for in the State Budget for the Functioning of the Energy Efficiency Fund - the draft act was developed and sent for approval to the central executive authorities concerned.

Against this backdrop, the “warm loans” program was suspended once again in terms of financing housing associations, which was the result of chronic underfunding. At the same time, the State Agency on Energy Efficiency and Energy Saving implemented another tranche of compensation under the program totalling UAH 71 mln, of which UAH 54.4 mln were received by households for insulation of individual housing, almost UAH 3.7 mln were received by the households, which installed solid fuel boilers, and another about UAH 12.9 mln were paid to housing associations and housing cooperatives, which implemented energy-efficient measures in multi-storey buildings<sup>74</sup>.

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<sup>73</sup> <http://www.minregion.gov.ua/press/news/gennadiy-zubko-ta-katarina-maternova-viznachili-zavdannya-dlya-pochatku-roboti-fondu-energoefektivnosti/>

<sup>74</sup> [http://www.kmu.gov.ua/control/publish/article?art\\_id=250457100](http://www.kmu.gov.ua/control/publish/article?art_id=250457100)



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At the government meeting on November 8, a decision was made to increase the financing of the "warm loans" program in 2017 by UAH 100 mln in accordance with the changes made to the State Budget for the current year. However, these funds will only be used for compensation for individuals<sup>75</sup>.

It is also worth noting that only with the support of the state to implement large-scale measures on the thermal modernization of housing is quite complicated, the amount of expenditures from the state budget for the government program is only decreasing each year, while the demand for it is significantly increasing. One of the ways out of the difficult situation is the local funding and co-financing programs. At present, local budgets are financing the thermal modernization of housing within the framework of such local programs, of which 151 programs are financed, and more than UAH 112 mln have already been allocated for their implementation.

## **Directive 2010/31/EC on energy performance of buildings**

As of the end of November, only one by-law, which should be made public a month after the state registration with the Ministry of Justice, was adopted to implement the Law on Energy Efficiency of Buildings, - the Order of the Ministry of Regional Development No. 267 of 06.10.2017 On the Determination of Buildings Commonly Used by Citizens, registered with the Ministry of Justice under No. 1329/31197 of 31.10.2017.

In addition, there are two draft by-laws on the official website of the Ministry of Regional Development. According to the MP, who officially requested the Ministry of Regional Development to provide information on the state of going through the stage of the approval of by-laws, the overwhelming majority of draft resolutions of the government and orders of the Ministry of Regional Development are under development. In particular, the status of the development of such documents became known:

### Draft resolutions of the Cabinet of Ministers of Ukraine:

- On approval of the Procedure for the Exchange of Information Between Central Executive Authorities, Attestation Commissions in the Process of Independent Monitoring, Professional Certification and Maintenance of Database of Certificates, Specialists and Reports<sup>76</sup> (is available for the public discussion on the website of the Ministry of Regional Development);
- On the establishment of the list of buildings for industrial and agricultural purposes, energy, transport, communications and defence facilities, warehouses, which are not subject to minimum requirements for energy efficiency of buildings and which are not subject to certification of energy efficiency of buildings<sup>77</sup> (is in the Ministry Justice for receiving a legal opinion).
- On Approval of the Procedure for Conducting Professional Certification of Persons who Intend to Carry out Activities on Certification of Energy Efficiency and Inspection of Engineering Systems (the draft act was developed and submitted for approval to central executive authorities concerned);
- On approval of the Procedure for Acquiring the Status of a Self-Regulatory Organization in the Field of Energy Efficiency and Approving an Exemplary Charter of a Self-Regulatory Organization in the Field of Energy Efficiency (the draft act was developed and submitted for approval to the central executive authorities concerned);
- On approval of the Procedure for the Exchange of Information Between Central Executive Authorities, Attestation Commissions in the Process of Independent Monitoring, Professional

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<sup>75</sup> <http://saee.gov.ua/uk/news/2041>

<sup>76</sup> <http://www.minregion.gov.ua/base-law/grom-convers/informatsiyni-povidomlennya-pro-provedennya-publichnogo-gromadskogo-obgovorennya-grom-convers/rozpochato-gromadske-obgovorennya-proektu-postanovi-kabinetu-ministriv-ukrayini-pro-zatverdzhennya-poryadku-obminu-informatsiyeu-mizh-tsentralnimi-organami-vikonavchoyi-vladi-atestatsiynimi-komisi/>

<sup>77</sup> <http://www.minregion.gov.ua/base-law/grom-convers/informatsiyni-povidomlennya-pro-provedennya-publichnogo-gromadskogo-obgovorennya-grom-convers/rozpochato-gromadske-obgovorennya-proektu-postanovi-kabinetu-ministriv-ukrayini-pro-vstanovlennya-pereliku-budivel-promislovogo-ta-silskogospodarskogo-priznachennya-ob-vektiv-energetiki-transpor/>

# Energy Efficiency and Social Issues

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Certification and Maintenance of Databases of Certificates, Specialists and Reports - the draft act was developed and submitted for approval to the central executive authorities concerned;

## Draft orders of the Ministry of Regional Development:

- On approval of the Procedure for Maintaining Databases of Reports on the Results of the Examination of Engineering Systems, Certified Energy Auditors and Experts in the Examination of Engineering Systems, Energy Certificates (the draft act was developed and submitted for approval to the central executive authorities concerned);
- On Approval of the Procedure for Independent Monitoring of Energy Certificates (the draft act was developed and submitted for approval to the central executive authorities concerned);
- On Approval of Methodological Recommendations on the Importance of Increasing the Energy Efficiency of Buildings - the draft act was developed and is being prepared for submission for approval of the central executive authorities concerned.
- On Approval of the Methodology for Determining the Energy Efficiency of Buildings (by order of the Ministry of Regional Development No. 296 as of 08.09.2017, the drafting of the act was included in the list of scientific and technological developments for 2018);
- On Approval of the Methodology for Calculation of Minimum Requirements and Economically Reasonable Level of Energy Efficiency of Buildings (the draft act is being developed, by the order of the Ministry of Regional Development No. 296 of 08.09.2017, the drafting of the act was included in the list of scientific and scientific technical developments for 2018);
- On Approval of the Procedure for the Use of Software for the Determination of the Energy Efficiency of Buildings (the draft act is being developed, by the order of the Ministry of Regional Development No. 296 of 08.09.2017, the drafting of an act was included in the list of scientific and scientific technical developments for 2018);
- On Approval of the Procedure for Certification of Energy Efficiency, Form of the Energy Certificate by the order of the Ministry of Regional Development No. 296 of 08.09.2017, the drafting of an act was included in the list of scientific and scientific technical developments for 2018;
- On Approval of the Procedure for Reviewing the Reports on the Inspection of Engineering Systems - by the order of the Ministry of Regional Development No. 296 of 08.09.2017 (development of the draft act was included in the list of scientific and scientific technical developments for 2018);
- On Approval of the Methods of Inspection of Engineering Systems, the Form of the Report on the Inspection and Periodicity of the Inspection (by order of the Ministry of Regional Development No. 296 of 08.09.2017, the drafting of the act was included in the list of scientific and scientific technical developments for 2018);
- On approval of the Procedure for Independent Monitoring of Reports on the Results of the Survey of Engineering Systems - by the order of the Ministry of Regional Development No. 296 of 08.09.2017, the drafting of an act was included in the list of scientific and scientific technical developments for 2018.

## **Social Issues**

On November 14, the Verkhovna Rada adopted in the first reading a draft Law on the State Budget of Ukraine for 2018. Among other items of expenditure, the document provides for more than UAH 55 bn of subventions to local budgets for the purpose of financing housing and communal subsidies<sup>78</sup>. Taking into account the dynamics of the sample of these funds during the current year, as well as the modernized system for their payment (monetization at the level of DHC enterprises), it can be safely anticipated that there will be disruptions of subsidy financing after the end of the first half of 2018.

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<sup>78</sup> [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=62551](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=62551)

# Energy Efficiency and Social Issues

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## ACQUIS UPDATE

As part of detailing of the Clean Energy for All Europeans strategic initiative, the European Commission has actually launched a separate program called Clean Energy for EU Islands, which aims to make energy supply to more than 2,200 European islands more sustainable, clean and affordable. Among other things, the peculiarities of the implementation of the initiative in the part of the islands will take into account the need of islands for energy self-sufficiency, the achievement of environmental goals, as well as the economic development of island territories.

Approaches to statistical accounting of energy service contracts under the EU legislation were improved. The changes are intended to facilitate the procedure for obtaining such services for public institutions such as schools and hospitals, in particular by clarifying the cases of assigning ESCO contracts to extrabudgetary settlements. Thus, a significant part of such institutions will be able to get rid of the need to undergo a complex bureaucratic process of approving the decision to purchase energy services. It is expected that in addition to implementing the strategic plan to overcome regulatory barriers to investment in energy efficiency, innovation in legislation will significantly strengthen the market for energy service providers, which is to a large extent made up of small and medium-sized enterprises.

In addition, the European Union continues to improve the requirements for the efficiency of home appliances. Thus, the updated ecodesign characteristics require all vacuum cleaners sold in the EU territory to be more energy efficient, namely to consume less electricity and thus have a higher minimum of dust absorption. Experts expect that updated requirements will save up to 70 EUR during the lifetime of each new device.

# Environment and Renewable Energy Sources

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In the second joint report of the European Commission's External Action Service, published in November 2017, on the fulfilment of the commitments made in the framework of the implementation of the Association Agreement by Ukraine in 2017, the dynamics of environmental reforms is described as positive.

In November, the government adopted two extremely important documents - the Waste Management Strategy and the National Plan for Reducing Emissions from Large Combustion Plants.

In the area of horizontal environmental legislation, there was no joyful news - MPs failed to vote in the second reading of the draft Law on Strategic Environmental Assessment, which was then sent to the repeated second reading, and the first three draft regulatory legal acts, published in October 2017, which are necessary for the start of implementation of the Law on Environmental Impact Assessment, have not yet been adopted.

At the end of the year, several important draft laws were approved and registered by the parliament, which would contribute to the implementation of the requirements of Directive 2009/29/EC and the goals of the National Renewable Energy Action Plan by 2020. In particular, the draft Law on Amendments to Certain Legislative Acts of Ukraine Regarding the Development of the Field of Production of Liquid Fuels from Biomass and Implementation of the Criteria for the Sustainability of Liquid Fuels from Biomass and Biogas Intended for Use in the Transport Sector was registered<sup>79</sup>. In addition, MPs approved the draft Law on joining the IRENA International Agency, which will allow Ukraine to receive cheap loans for the implementation of "green" projects.

**Directive 2011/92/EC on the assessment of the effects of certain public and private projects on the environment (codification) (Article 363 of the AA):**

Published in October 2017, three draft resolutions<sup>80</sup> necessary for the practical implementation of the Law on Environmental Impact Assessment, namely, the draft CMU Resolution on Approval of the Procedure for the Transfer of Documents to Provide a Conclusion on the Assessment of the Environmental Impact and the Maintenance of the Unified Register of Environmental Impact Assessment; the CMU draft Resolution on Approval of the Criteria for Determination of Planned Activities, its Extension and Change that are not Subject to Environmental Impact Assessment; the draft CMU Resolution on Approval of the Procedure for Conducting Public Hearings in the Process of Environmental Impact Assessment were publicly discussed, but not yet adopted by the government.

Nevertheless, the Ministry of Environment and Natural Resources is preparing for the practical implementation of the Law on Environmental Impact Assessment, which theoretically should be completed on December 18 this year. On 21 November 2017, the Ministry of Environment and Natural Resources held a meeting with deputies of heads of regional state administrations and representatives of environmental departments, devoted to the practical implementation of EIA. Local authorities need clarification on their additional powers and functions that they will receive as the practical implementation of the Law on Environmental Impact Assessment is started. During the meeting, the Minister of Environment and Natural Resources O.Semerak, among other things, noted "... each regional state administration will receive new powers and obligations. The obligation to carry out an environmental impact assessment will be based on

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<sup>79</sup> [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=62987](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=62987)

<sup>80</sup> <https://menr.gov.ua/news/31757.html>



# Environment and Renewable Energy Sources

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subdivisions on ecology and natural resources, which, after the administrative reform, are subordinated to the regional state administrations. That is why it is important today to discuss a joint action plan and start practical, effective implementation of the Law. And the success of this process depends first and foremost on the effective steps taken by local government officials”<sup>81</sup>.

## **Directive 2001/42/EC on the assessment of the effects of certain plans and programs on the environment (Article 363 of the AA):**

On 7 November 2017, the draft Law on Strategic Environmental Assessment was put to a second reading vote in the Verkhovna Rada. However, the draft law did not receive sufficient support and was sent by MPs for a second re-reading<sup>82</sup>.

Despite the failure of the draft law in the parliament, in mid-November, a workshop was held for 30 environmental specialists from Ukraine, Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan and Moldova on the implementation and use of the SEA tool<sup>83</sup>.

## **Directive 2003/4/EC on public access to environmental information and repealing Directive 90/313/EEC (Article 363 of the AA)**

Although no steps were taken in the approximation of this directive, the Ministry of Environment and Natural Resources devotes a lot of attention to the provision of access to environmental information. The BRDO presented the Government Openness analytical review for the second time. The research was conducted for the purpose of covering public data on official sites of ministries and departments. The key focus is how the Ukrainian ministries meet the requirements for the openness and availability of information about their activities. In general, the government has improved its openness by 19%. The Ministry of Environment and Natural Resources received 71 points out of 77 possible, becoming the leader of the government’s openness among the ministries<sup>84</sup>.

## **Directive 2010/75/EC on industrial emissions (comprehensive pollution prevention and control) (Article 363 of the AA)**

On 8 November 2017, the government approved the National Plan for Reducing Emissions from Large Combustion Plants (NERP)<sup>85</sup> by its decree and designated the Ministry of Energy as the coordinator of its implementation. Before 1 December 2017, the Ministry of Energy must submit a draft action plan for the implementation of the NERP for 2018 to the CMU. By its prior decision in September 2017, the CMU obliged the Ministry of Environment and Natural Resources to amend the technological standards of allowable emissions of pollutants from such plants within 3 months after the approval of the NERP.

The NERP was adopted to fulfil Ukraine’s obligations under the Treaty on the Accession to the Energy Community (EU Directive 2001/80/EC) and aims to gradually reduce emissions of sulphur dioxide, nitrogen oxides and dust from large combustion plants (with a nominal heat output of 50 MW and more) until 31 December 2033. The NERP represents the intentions of Ukraine as a member of the Energy Community to significantly reduce emissions from existing large combustion plants. There are currently 223 such plants in

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<sup>81</sup> <https://menr.gov.ua/news/31870.html>

<sup>82</sup> [http://w1.c1.rada.gov.ua/pls/radan\\_gs09/ns\\_golos?g\\_id=15381](http://w1.c1.rada.gov.ua/pls/radan_gs09/ns_golos?g_id=15381)

<sup>83</sup> <https://menr.gov.ua/news/31863.html>

<sup>84</sup> <https://menr.gov.ua/news/31895.html>

<sup>85</sup> [http://www.kmu.gov.ua/control/uk/publish/article?art\\_id=250405951&cat\\_id=244274160](http://www.kmu.gov.ua/control/uk/publish/article?art_id=250405951&cat_id=244274160)

# Environment and Renewable Energy Sources

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Ukraine, 90 of which are included in the NERP for emission reductions, 135 should be decommissioned and only 3 will already meet the requirements for emissions from January 2018. The plan provides for annual submission reports on the implementation of the National Emission Reduction Plan (provided by the MECI) for consideration by the Energy Community Secretariat.

## **Directive 1999/32/EC relating to a reduction in the sulphur content of certain types of liquid fuels and amending Directive 93/12/EC, as amended by Regulation (EC) 1882/2003 and Directive 2005/33/EC (Article 363 of the AA)**

On 8 November 2017, on its website<sup>86</sup>, the Ministry of Energy reported that from 01.01.2018, the norm of the third paragraph of clause 15 of the above-mentioned Technical Regulation [Technical Regulation on Requirements for Automobile Petroleum, Diesel and Ship Fuel and Boiler Oil] concerning the ban on the production and putting into circulation of furnace boiler oils (fuel oil) with sulphur content of more than 1% by mass will enter into force for all, without exception, enterprises, institutions and organizations. At present, the relevant provision on sulphur content in fuel oil is not applicable because of the decision taken last December, which set a one-year delay. However, such a message looks more like the preparation of the Ministry of Energy for the meeting of the Council of Ministers of the Energy Community to be held on December 14, and will, among other things, address Ukraine's failure to comply with Directive 1999/32/EC relating to a reduction in the sulphur content of certain types of liquid fuels.

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

Ukraine joined the IRENA International Agency. In early November, it became known that the Committee of the Council recommended to the Parliament to adopt the draft Law on the Accession of Ukraine to the Statute of the International Renewable Energy Agency (IRENA) (No. 0164<sup>87</sup>). In early December, MPs voted for the relevant draft law (254 votes in favor)<sup>88</sup>.

Accession to the IRENA will have many positive consequences for the "green" energy sector of Ukraine. Among the main ones, it can be noted that Ukraine will be able to apply to the Abu Dhabi Development Fund to receive preferential loans for the implementation of "green" projects under 1-2% for the period up to 20 years; to learn about global innovations in renewable energy; to cooperate with developed countries in this field; to receive IRENA recommendations for improving renewable energy legislation. All this will contribute to the fulfilment of international commitments to achieve 11% of the energy from renewable sources in the energy balance in 2020.

At the end of the month, the draft Law No. 7348 on the development of the sphere of production of biomass liquid fuels, in particular bioethanol and biodiesel, was also developed in the Verkhovna Rada jointly with the State Agency on Energy Efficiency and Energy Saving.

Adoption of this draft law will promote:

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<sup>86</sup> [http://mpe.kmu.gov.ua/minugol/control/uk/publish/article?art\\_id=245252534&cat\\_id=35109](http://mpe.kmu.gov.ua/minugol/control/uk/publish/article?art_id=245252534&cat_id=35109)

<sup>87</sup> [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=62668](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=62668)

<sup>88</sup> <https://delo.ua/business/vr-prinjala-zakon-o-prisoedinenii-ukrainy-k-mezhdunarodnomu-agen-337190/>

# Environment and Renewable Energy Sources

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- creation of a guaranteed market for the production and use of liquid biological fuels in Ukraine;
- increase of investments in this sector;
- construction of new plants for the production of bioethanol and biodiesel;
- loading of distilleries and production potential of related fields;
- increase in revenues to budgets of all levels;
- creation of additional workplaces.

In parallel, the Ministry of Foreign Affairs of Finland<sup>89</sup> and the Nordic Environmental Finance Corporation (NEFCO)<sup>90</sup> signed an Agreement on Creating the Fund for Financial Support for Renewable Energy Projects in Ukraine. The fund will amount to EUR 6 mln. The Finnish-Ukrainian Trust Fund provides for technical assistance and allocation of grant funds for the implementation of renewable energy projects in Ukraine. The State Department on Energy Efficiency and Energy Saving will be the main coordinator of the fund's work on the part of Ukraine. Projects will be funded through NEFCO.

In addition, in November, within the framework of the IX International Investment Business Forum "Renewable Energy and Energy Efficient Industrial Modernization", the Memorandum of Understanding in the areas of energy efficiency, renewable energy and alternative fuels was signed between the State Agency on Energy Efficiency and Energy Saving and the Energy Efficiency Fund of the Republic of Moldova<sup>91</sup>. According to S.Savchuk, the provisions of the Memorandum provide for the search for European Union grants and the joint submission of applications from Ukraine and Moldova to obtain financing for energy efficient projects.

It should be noted that this month, the brothers Zinchenko, who founded the Ukrainian incubator Greencubator and are actively involved in the development of the community, initiatives and entrepreneurship in the area of "green" energy and sustainable development, have received the most prestigious world renewable energy award - Stanford Bright Award 2017<sup>92</sup>. This award is annual and rewards people who have made a significant contribution to preservation of global environment.

Ukraine also continues to increase the RES capacity. In the Kherson region, 12 wind turbines with a capacity of 43.2 MW were commissioned at the Novotroyitska station<sup>93</sup>. According to the Prime Minister V. Groysman, after the completion of the construction, this power plant will be among the three most powerful in Ukraine.

At the same time, November is also marked by bad news. In particular, meetings of the National Energy and Public Utilities Regulating Commission (NEURC) are not taking place for half a month through the lack of members of the commission for decision-making. Probably the commission will resume its work in the spring of 2018. This leads to the fact that 33 companies, which is 134 MW of renewable capacity, cannot get a "green" tariff. As a result, already built facilities will lose about EUR 4.3 mln in just three months<sup>94</sup>.

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<sup>89</sup> <http://formin.finland.fi>

<sup>90</sup> <https://www.nefco.org>

<sup>91</sup> [http://www.kmu.gov.ua/control/uk/publish/article?art\\_id=250451844&cat\\_id=244276429](http://www.kmu.gov.ua/control/uk/publish/article?art_id=250451844&cat_id=244276429)

<sup>92</sup> <https://www.ukrinform.ua/rubric-diaspora/2343900-ukrainci-otrimali-najprestiznisu-nagorodu-za-vprovadzenna-zelenih-tehnologij.html>

<sup>93</sup> <https://www.ukrinform.ua/rubric-economy/2342529-na-hersonsini-zapustili-dvanadcat-vitrogeneratoriv-potuznistu-432-mvt.html>

<sup>94</sup> <https://www.epravda.com.ua/news/2017/11/21/631398/>

# Oil

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During the reporting period, the government's intentions regarding "timely fulfilment of tasks and rapid approval of the decisions of the Association bodies" were questioned, since the Action Plan for the Implementation of the Association Agreement, which contained "more than 2,000 specific tasks" and more than 5,000 measures for their implementation", approved at the meeting of the Cabinet of Ministers on 25 October 2017<sup>95</sup>, was never published. According to unofficial information, the revision of this document is not completed, which does not allow analysing the updated list of Ukraine's obligations in the oil sector.

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

In the report of the Energy Community Secretariat of 1 September 2017, it was noted that there was no progress in the creation of oil reserves in Ukraine, and none of the priority tasks was fulfilled, being postponed for an indefinite period of time<sup>96</sup>.

Following this and the updated plan for the implementation of Directive 2009/119/EC<sup>97</sup>, developed by the State Agency of Reserve, prepared for the replacement of the current one<sup>98</sup>, the Cabinet of Ministers has postponed the time limits:

- the selection of a model of minimum oil and oil products stocks - from December 2015 to December 2017 (responsible - the Ministry of Energy and Coal Industry and the State Statistics Service);
- preparation of the draft Law on Minimum Oil and Oil Products Stocks - from December 2016 to December 2017 (responsible - the State Agency of Reserve, the Ministry of Economic Development and the Ministry of Finance);
- implementation of all planned organizational measures - for the period after the entry into force of the Law on Minimum Oil and Oil Products Reserves<sup>99</sup>.

However, the letter No. 100-29/03-12405 of 15 November 2017 of the Antimonopoly Committee of Ukraine, which had "to create legislative conditions for the formation of strategic oil and oil products stocks until the end of 2017"<sup>100</sup>, refers to the cancellation of this order and the adjustment of the above terms of the Resolution on Implementation of the Association Agreement. Nevertheless, as of 5 December 2017, the text of such a document has not been made public.

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

On 5 October 2017, the Verkhovna Rada registered the draft law<sup>101</sup> No. 7177, the developers of which, in particular, propose to release by 2025:

- transactions on import, sale and purchase of electric vehicles and charging stations to them from taxation;
- sales of electric energy used in charging stations networks from licensing;
- taxi services, which will use electric vehicles, from taxation;
- the first registration of an electric vehicle from the Pension Fund duty.

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<sup>95</sup> [http://www.kmu.gov.ua/control/uk/publish/article?art\\_id=250372246&cat\\_id=244276429](http://www.kmu.gov.ua/control/uk/publish/article?art_id=250372246&cat_id=244276429)

<sup>96</sup> [https://www.energy-community.org/dam/jcr:b03950a0-9367-4618-961b-3efad53b79fd/EnC\\_IR2017.pdf](https://www.energy-community.org/dam/jcr:b03950a0-9367-4618-961b-3efad53b79fd/EnC_IR2017.pdf)

<sup>97</sup> [http://civic.kmu.gov.ua/consult\\_mvc\\_kmu/uploads/attach-3346-490347147.pdf](http://civic.kmu.gov.ua/consult_mvc_kmu/uploads/attach-3346-490347147.pdf)

<sup>98</sup> <http://zakon0.rada.gov.ua/laws/show/346-2015-%D1%80>

<sup>99</sup> <http://zakon3.rada.gov.ua/laws/show/503-2017-%D1%80>

<sup>100</sup> <http://zakon3.rada.gov.ua/laws/show/503-2017-%D1%80>

<sup>101</sup> [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=62667](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=62667)

According to the authors of the document, its implementation by 2025 “will reduce the consumption of oil products by 10% and the volume of emissions of automobiles to the atmosphere by 10%, which will also save more than UAH 12 bn (in 2017 prices), which will remain in Ukraine. For the same amount, the GDP of the country will automatically increase”<sup>102</sup>. Unfortunately, since the rationale for the submitted draft law contains numerous errors, it is unlikely to be included in the agenda.

On 30 November 2017, the draft Law on Amendments to Certain Legislative Acts of Ukraine on the Development of the Field of Production of Liquid Fuel from Biomass and Biogas Intended for the Use in the Transport Sector (registration No. 7348<sup>103</sup>) was submitted to the Committee on FEC, Nuclear Policy and Nuclear Safety. In particular, it provides for the introduction of administrative liability for business entities that produce and/or import motor fuels containing bio-components for sale in the customs territory of Ukraine:

- in automotive petroleum - less than 3.4% (energetic), that is 5% (volumetric), in the total annual sales volume - from 1 January 2019, and less than 4.8% (energetic), that is 7% (volumetric) - from 1 January 2020;
- in diesel fuel - less than 2.7% (energetic), that is 3% (volumetric) - from 1 January 2019.

The organization and administration of accounting, as well as monitoring of the content of bio-components in motor fuels and their compliance with the sustainability criteria should be carried out by a central executive authority that implements state policy in the areas of efficient use of fuel and energy resources, energy saving, renewable energy sources and alternative fuels (that is, State Agency on Energy Efficiency and Energy Saving, which does not have any experience, specialists, equipment or financial resources for this).

Although this document was submitted by a number of MPs, its main provisions coincide with the provisions the draft Law on Amendments to Certain Legislative Acts of Ukraine on the Development of the Sphere of Production of Liquid Biological Fuels<sup>104</sup> (objective I, task 187<sup>105</sup>), developed by the State Agency on Energy Efficiency and Energy Saving and previously rejected by the Ministry of Energy and Coal Industry, the Ministry of Economic Development and the State Regulatory Service. In this regard, it seems that, without receiving support from any of the concerned executive authorities, the original authors of the document try to pass it beyond the procedure established by the Cabinet of Ministers.

At the same time, the requirement to provide the share of 3.4% (energetic), that is 5% (volumetric), of bio-components in the total annual sales of automotive petroleum from 1 January 2019 is unnecessary, as this norm is stipulated by the current Ukrainian standards from 2008. As for the requirement to increase the content of bioethanol and biodiesel in oil products to at least 4.8% (energy) from 1 January 2020, it is impossible to do it, since all producers of countries of origin of automobile petroleum sold in Ukraine do not add to it more than 3.4% (energetic) bio-components, as it is not provided by standards<sup>106</sup>.

The State Agency on Energy Efficiency and Energy Saving states that the introduction of administrative responsibility for the lack of bioethanol and biodiesel in oil products being sold in Ukraine is aimed at the implementation of Directive 2009/28/EC. However, all EU Member States guarantee the preservation of the supply of traditional oil products for non-adapted vehicles (paragraph 30 of the Preamble<sup>107</sup>). At the same time, the compulsory, under penalty of punishment, use of bioethanol and biodiesel in oil products discriminates not only 60% of Ukrainian car users, whose vehicles are not adapted to use mixed fuels containing bio-components of more than 3.4% (energetic), but also market participants, since such the

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<sup>102</sup> <http://w1.c1.rada.gov.ua/pls/zweb2/webproc34?id=&pf3511=62667&pf35401=435861>

<sup>103</sup> [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=62987](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=62987)

<sup>104</sup> <http://kompek.rada.gov.ua/news/Povidomlennja/73236.html>

<sup>105</sup> <http://www.kmu.gov.ua/document/249935381/R0275.doc>

<sup>106</sup> E.g., [https://www.greenenergy.com/uploads/i7wClkitAMVX\\_Petrol%20Sales%20specification%20sheet.pdf](https://www.greenenergy.com/uploads/i7wClkitAMVX_Petrol%20Sales%20specification%20sheet.pdf)

<sup>107</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32009L0030&from=EN>



requirements are contrary to Article 18-3 of the Economic Code of Ukraine, which prohibits the authorities “to take actions that eliminate competition or unreasonably favor certain competitors in entrepreneurial activity” and are subject to Article 166-3 of the Code of Ukraine on Administrative Offenses, since they restrict the production of certain goods, as well as the rights of entrepreneurs to purchase and sale them. In addition, “even with the maximum level of blending defined in the draft law, achievement of the mandatory goal of 10% of energy consumption in transport is impossible”<sup>108</sup>.

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

On 23 November 2017, the Vice Prime Minister V. Kistion informed<sup>109</sup> that by the end of the year the government plans to support legislative initiatives on:

- improvement of the procedure for the provision of land for exploration, construction, maintenance works, pipeline transport facilities and simplification of other permitting procedures in the extractive industry (registration No. 3096-д)<sup>110</sup>;
- a decrease to 2% of the rental fee for the use of subsoil for the extraction of oil and gas condensate in the terms of operation of the production distribution agreement (registration No. 3027)<sup>111</sup>.

However, if the first document has already been put on the agenda of the Verkhovna Rada<sup>112</sup> and is scheduled to be considered in the second decade of December 2017, there are some doubts about the possibility of swift adoption of the second one. Firstly, the opinion of the Ministry of Environment and Natural Resources on the mentioned draft law was considered by the government on 22 December 2015<sup>113</sup>. And since then, the executive authorities have not taken any measures aimed at accelerating its consideration in the parliament. Secondly, amendment of the Tax Code proposed in this document is not included in the draft law<sup>114</sup>, which should ensure the implementation of the State Budget of Ukraine for 2018<sup>115</sup>.

It was also decided to approve the following updated documents by the end of December:

- Procedure for Granting Special Permits for the Use of Subsoil<sup>116</sup>;
- Procedure for Holding Auctions for the Sale of Special Permits for Use<sup>117</sup>;
- Regulation on the Procedure of Disposal of Geological Information<sup>118</sup>;
- Methods for Determining the Value of Reserves and Resources of Minerals of the Deposit or Subsoil Areas Provided for Use<sup>119</sup>.

The same day, the Minister of Environment and Natural Resources O.Semerak stated that “most of regulatory legal acts that have recently regulated the sphere of subsoil use are obsolete and do not meet the needs of the national economy”<sup>120</sup>. The ministry plans to submit “the first package of amendments to legislation” to the government for consideration, after approval by the central executive authorities.

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<sup>108</sup> <http://www.reee.org.ua/assets/2016/05/Presentation-for-WG1.pdf>

<sup>109</sup> [http://www.kmu.gov.ua/control/uk/publish/article?art\\_id=250448206](http://www.kmu.gov.ua/control/uk/publish/article?art_id=250448206)

<sup>110</sup> [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=61900](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=61900)

<sup>111</sup> [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=56368](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=56368)

<sup>112</sup> <http://zakon3.rada.gov.ua/laws/show/2149-viii>

<sup>113</sup> <http://www.kmu.gov.ua/control/uk/meetings/agenda?mid=248719412>

<sup>114</sup> [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=62878](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=62878)

<sup>115</sup> [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=62551](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=62551)

<sup>116</sup> <http://zakon0.rada.gov.ua/laws/show/615-2011-%D0%BF>

<sup>117</sup> <http://zakon2.rada.gov.ua/laws/show/594-2011-%D0%BF>

<sup>118</sup> <http://zakon0.rada.gov.ua/laws/show/423-95-%D0%BF>

<sup>119</sup> <http://zakon5.rada.gov.ua/laws/show/1117-2004-%D0%BF>

<sup>120</sup> <https://menr.gov.ua/news/31878.html>

Unfortunately, almost all draft regulatory legal acts prepared by the State Service of Geology and Mineral Resources in September-October 2017 draft legal acts, added (in accordance with the decision of the Working group on reforming relations in the field of subsoil use<sup>121</sup>) to the Action Plan of the Ministry of Environment and Natural Resources on the preparation of draft regulatory acts for 2017 (deadline - fourth quarter of 2017) on November 3<sup>122</sup> and 11<sup>123</sup>, 2017, were rejected by the State Regulatory Service due to the failure of the developer to comply with key principles of regulatory policy.

In particular, on 10 November 2017, by the decision No. 501<sup>124</sup>, the draft amendments developed by the State Service of Geology and Mineral Resources to Articles 26, 43 and 46 of the Law on Local Self-Government in Ukraine were sent to be revised<sup>125</sup>. This document<sup>126</sup> offered:

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

On the same day, the State Regulatory Service, by its decisions No. 502<sup>127</sup> and 503<sup>128</sup>, forwarded the following draft resolutions prepared by the State Service of Geology and Mineral Resources to be revised:

- On the implementation of the pilot project on the implementation of the procedure for conducting auctions for the sale of special permits for the use of subsoil through electronic auction<sup>129</sup>, which was to provide "a fundamentally new level of quality of service of potential subsoil users"<sup>130</sup>. It was noted that "the electronic tenders system will work in real time for an unlimited number of people. In addition, the collection, visualization and storage of information about the objects of tenders will be carried out, the authorization of the tenderers will be conducted, as well as the provision, comparison and acceptance of their price proposals"<sup>131</sup>;
- On amendments to the Methodology for Determining the Value of Reserves and Resources of Mineral Resources of the Field or Subsoil Area Provided for the Use" aimed at bringing paragraphs 4 and 6 of the Methodology<sup>132</sup> in line with UNFC 2009 (Objective I, Task 203<sup>133</sup>). The document proposes<sup>134</sup>: to determine the value of reserves and resources of minerals, based on the forecast price of the final (and not the first) commodity products obtained from the main and accompanying minerals and components or products of their processing, which are to be sold; to enter in particular amortization deductions into the formula for calculating the value of operating costs; to change the period for calculating discounted share in accordance with established practice and procedure.

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<sup>121</sup> <http://www.geo.gov.ua/novyna/rozglyanuto-pershyy-paket-zakonodavchyyh-zmin-shchodo-reformuvannya-galuzi>

<sup>122</sup> [https://menr.gov.ua/files/docs/nakazy/nakaz\\_365.pdf](https://menr.gov.ua/files/docs/nakazy/nakaz_365.pdf)

<sup>123</sup> [https://menr.gov.ua/files/docs/nakazy/nakaz\\_403.pdf](https://menr.gov.ua/files/docs/nakazy/nakaz_403.pdf)

<sup>124</sup> [http://www.drs.gov.ua/wp-content/uploads/2017/10/10003\\_10\\_11\\_17.pdf](http://www.drs.gov.ua/wp-content/uploads/2017/10/10003_10_11_17.pdf)

<sup>125</sup> <http://www.geo.gov.ua/novyna/dlya-pryskorennya-roboty-oblad-derzhgeonadra-rozroblyly-proekt-zmin-do-zakonu-ukrayiny>

<sup>126</sup> [http://www.geo.gov.ua/sites/default/files/imce/proekt\\_zakonu.doc](http://www.geo.gov.ua/sites/default/files/imce/proekt_zakonu.doc)

<sup>127</sup> [http://www.drs.gov.ua/wp-content/uploads/2017/10/10004\\_10\\_11\\_17.pdf](http://www.drs.gov.ua/wp-content/uploads/2017/10/10004_10_11_17.pdf)

<sup>128</sup> [http://www.drs.gov.ua/wp-content/uploads/2017/10/10005\\_10\\_11\\_17.pdf](http://www.drs.gov.ua/wp-content/uploads/2017/10/10005_10_11_17.pdf)

<sup>129</sup> [http://www.drs.gov.ua/wp-content/uploads/2017/10/10901\\_02\\_10\\_2017-2.pdf](http://www.drs.gov.ua/wp-content/uploads/2017/10/10901_02_10_2017-2.pdf)

<sup>130</sup> <http://www.geo.gov.ua/novyna/vsi-aukciony-derzhgeonadr-provodytymutsya-v-rezhymi-onlayn>

<sup>131</sup> Ibid.

<sup>132</sup> <http://zakon3.rada.gov.ua/laws/show/1117-2004-%D0%BF>

<sup>133</sup> <http://www.kmu.gov.ua/document/249935381/R0275.doc>

<sup>134</sup> [http://www.geo.gov.ua/sites/default/files/imce/zmpostkmu1117\\_2017\\_ok.doc](http://www.geo.gov.ua/sites/default/files/imce/zmpostkmu1117_2017_ok.doc)

On 23 November 2017, for the same reasons, the draft Resolution on Amendments to Certain Decisions of the Cabinet of Ministers (No. 594 and No. 615 of 30 May 2011)<sup>135</sup> was rejected (decision No. 510<sup>136</sup>). The said document, which supplemented the draft resolution<sup>137</sup>, had to eliminate inconsistencies in the Procedure for Granting Special Permits for the Use of Subsoil and the Procedure for Holding Auctions for the Sale of Special Permits for the Use of Subsoil, based on the practice of their application, in particular:

- to remove the program of works on subsoil areas from a package of auction documentation submitted together with an application for putting up a permit for the use of a subsoil area for auction;
- to submit an application together with the documents necessary for obtaining special permits for the use of subsoil, also in electronic form;
- to remove the provision prohibiting the granting of a permit without an auction to a person who does not perform a program of work on the subsoil areas, for which a permit has already been granted, or as to which violations of the rules for the use of subsoil on such area were detected, as is recorded in the inspection reports, orders or decrees of the relevant authorities in the field of subsoil use, until they are eliminated;
- to remove the provisions on mandatory sealing of applications and other documents submitted by business entities for granting of special permits for the use of subsoil.

On the same day, the State Regulatory Service, by its decision No. 532<sup>138</sup>, again -rejected the Draft Order of the Ministry of Environment and Natural Resources on Approval of the Instruction on the Content, Execution and Procedure for Submission of the Materials of Geological and Economic Assessment of Oil and Gas Fields<sup>139</sup> to the State Commission of Ukraine on Mineral Resources, prepared by the State Service of Geology and Mineral Resources. The updated Instruction<sup>140</sup> should identify:

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

As of 5 December 2017, only one draft resolution prepared by the State Service of Geology and Mineral Resources - On Making Amendments to the Classification of Mineral Resources Reserves and Resources aimed at ensuring the possibility for sub-users to apply the provisions of the United Nations Framework Classification for Fossil Energy and Mineral Reserves and Resources 2009 (UNFC 2009). The classification<sup>141</sup> is proposed to be supplemented by paragraph 28, which provides for the use of UNFC 2009, CRIRSCO, PRMS international standards, etc.<sup>142</sup> for the needs of a subsoil user upon his application. However, given

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<sup>135</sup> [http://www.drs.gov.ua/wp-content/uploads/2017/10/11483\\_12\\_10\\_17.pdf](http://www.drs.gov.ua/wp-content/uploads/2017/10/11483_12_10_17.pdf)

<sup>136</sup> [http://www.drs.gov.ua/wp-content/uploads/2017/10/10098\\_15\\_11\\_17.pdf](http://www.drs.gov.ua/wp-content/uploads/2017/10/10098_15_11_17.pdf)

<sup>137</sup> [http://www.geo.gov.ua/sites/default/files/imce/proekt\\_postanovy\\_0.doc](http://www.geo.gov.ua/sites/default/files/imce/proekt_postanovy_0.doc)

<sup>138</sup> [http://www.drs.gov.ua/wp-content/uploads/2017/10/10461\\_23\\_11\\_17.pdf](http://www.drs.gov.ua/wp-content/uploads/2017/10/10461_23_11_17.pdf)

<sup>139</sup> [http://www.geo.gov.ua/sites/default/files/imce/proekt\\_nakazu\\_120\\_dkz\\_3.doc](http://www.geo.gov.ua/sites/default/files/imce/proekt_nakazu_120_dkz_3.doc)

<sup>140</sup> [http://www.geo.gov.ua/sites/default/files/imce/instrukciya\\_dgs\\_1\\_2.doc](http://www.geo.gov.ua/sites/default/files/imce/instrukciya_dgs_1_2.doc)

<sup>141</sup> <http://zakon2.rada.gov.ua/laws/show/432-97-%D0%BF>

<sup>142</sup> [http://www.geo.gov.ua/sites/default/files/imce/proekt\\_pkmu\\_pro\\_zminy\\_do\\_pkmu\\_no432\\_okk.doc](http://www.geo.gov.ua/sites/default/files/imce/proekt_pkmu_pro_zminy_do_pkmu_no432_okk.doc)

the inadequate quality of the preparation of other documents by the State Service of Geology and Mineral Resources, it can be assumed that the State Regulatory Service will also send this project for revising.

The situation surrounding the preparation of the Subsoil Code, a new version of which had to be adopted in 2016<sup>143</sup>, has not changed substantially. It is known that the amendments are developed by the working under the Ministry of Environment<sup>144</sup>. However, according to the Cabinet of Ministers, as of 20 November 2017, the draft Code is still “developed by the authorities concerned”<sup>145</sup>, although its submission to the Verkhovna Rada is scheduled for the fourth quarter of 2017 (Objective I, task 202<sup>146</sup>).

The state of preparation of the government’s draft resolution on amending the Methodology for determining the initial selling price of a special permit for the use of subsoil at auction<sup>147</sup> (Objective I, task 204<sup>148</sup>), which should introduce a differentiated approach to the evaluation, depending on the intended purpose of works (exploration or extraction), the degree of reliability of geological materials (resources or reserves) and the type of deposits depending on the complexity of extraction (traditional or non-traditional methods) is unknown.

On 11 October 2017, paragraph 65, which concerned the introduction of a simplified procedure for the use of land during geological exploration and was to be implemented in the first quarter of 2017 by being developed by the Ministry of Agrarian Policy and the submission of the draft Law on Amending the Land Code and the Law on State Registration of Proprietary Rights to Real Estate and Their Encumbrances for the consideration of the Verkhovna Rada by the government, was removed<sup>149</sup> from the Action Plan for Deregulation of Economic Activities<sup>150</sup>. It can be assumed that the government considers the preparation of the relevant changes, as well as the draft act of the Cabinet of Ministers on amending the Regulation on the Procedure for the Provision of Mining Allotments<sup>151</sup> in relation to the abolition of the mining allotment for the oil and gas industry (implementation deadline - the first quarter of 2017<sup>152</sup>) as such that does not require additional attention since the solution of these issues is provided for by the draft Law on Amending Some Legislative Acts of Ukraine on Simplification of Some Aspects of the Oil and Gas Industry (registration No. 3096-Д)<sup>153</sup>. This document is already on the agenda of the Verkhovna Rada<sup>154</sup> and is scheduled to be considered in the second decade of December 2017.

## **Article 279 of the Association Agreement in terms of ensuring equal access and carrying out activities for the exploration, extraction and production of hydrocarbons**

In Ukraine, the updated principles for the payment of financial contributions by entities that have been granted a permit to explore, extract and produce hydrocarbons are gradually being introduced. On 20 November 2017, within the framework of this work, the draft law<sup>155</sup> was registered, the authors of which, in particular, propose:

- to tax additional volumes of hydrocarbons extracted from deposits identified by the Cabinet of Ministers as having heavy and depleted reserves due to the implementation of investment projects at the rental fee rate in the amount of 2% of the cost of overbase volumes of hydrocarbons;

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<sup>143</sup> [http://www.kmu.gov.ua/document/248102926/Dir\\_94\\_22.pdf](http://www.kmu.gov.ua/document/248102926/Dir_94_22.pdf)

<sup>144</sup> <https://menr.gov.ua/content/sklad-robochoi-grupi.html>

<sup>145</sup> <http://www.drs.gov.ua/deregulation/plan-deregulyatsiyi-2016-2017-rr/>

<sup>146</sup> <http://www.kmu.gov.ua/document/249935381/R0275.doc>

<sup>147</sup> <http://zakon0.rada.gov.ua/laws/show/1374-2004-%D0%BF>

<sup>148</sup> <http://www.kmu.gov.ua/document/249935381/R0275.doc>

<sup>149</sup> <http://zakon3.rada.gov.ua/laws/show/724-2017-%D1%80>

<sup>150</sup> <http://zakon3.rada.gov.ua/laws/show/615-2016-%D1%80/paran13#n13>

<sup>151</sup> <http://zakon2.rada.gov.ua/laws/show/59-95-%D0%BF>

<sup>152</sup> <http://zakon2.rada.gov.ua/laws/show/1079-2016-%D1%80/paran146#n146>

<sup>153</sup> [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=61900](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=61900)

<sup>154</sup> <http://zakon3.rada.gov.ua/laws/show/2149-viii>

<sup>155</sup> [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=62938](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=62938)

- to take on basic volumes of hydrocarbons extracted in these deposits using existing capacities, techniques and technologies.

On 7 November 2017, the Interdepartmental Commission on the Organization of Conclusion and Implementation of Production Sharing Agreements approved draft government resolutions:

- on holding a tender for concluding PSA for hydrocarbons that will be extracted within the boundaries of the Varvinska area;
- on holding a tender for concluding PSA for hydrocarbons that will be extracted within the boundaries of the Berestianska, Smilianska, Romanivska, Shubinska and Novostepanivska areas.

The conditions for conducting tenders shall take into account, in particular, the requirements for the disclosure of the final beneficiary and the compliance of the undertakings with the investment obligations<sup>156</sup>.

## **Article 280 of the Association Agreement regarding transparency in licensing hydrocarbon prospecting, exploration and production**

The Ministry of Environment and Natural Resources continues to delay with the introduction of amendments to the Regulation on the Procedure of Disposal of Geological Information<sup>157</sup> (Objective I, Task 206<sup>158</sup>), which should, in particular, introduce simplified digital access to real-time secondary geological information (the dead-line for performing the task - the first quarter of 2017<sup>159</sup>). Although on September 28, 2017, the relevant draft government resolution<sup>160</sup> was published on the website of the State Service of Geology and Mineral Resources, on October 14, the Minister of Environment and Natural Resources O. Semerak noted that “we decided not to amend the outdated Regulation on Geological Information, but instead to create a qualitatively new document”<sup>161</sup>. To execute this decision, on 9 November 2017, a new draft Regulation on the Procedure for the Disposal of Geological Information<sup>162</sup> was submitted to the State Regulatory Service for approval.

According to the developers, the adoption of the prepared document will allow:

- to introduce a transparent procedure for the sale of the geological information created at subsoil user's expense;
- to introduce a clear and understandable procedure for the purchase of the geological information owned by the state;
- to create a Unified Geological Information Register.

The draft regulation<sup>163</sup> provides for:

- introduction of a clear and transparent procedure for the purchase of geological information that will provide access to it for all interested parties on equal terms;
- replacement of the procedure of approval of sale of the geological information created (purchased) at the expense of legal entities and individuals by a notification;
- establishment of exclusive grounds for refusal to sale geological information;
- ensuring the possibility of familiarizing third parties with geological information, transferred to a subsoil user under a contract of sale of the right to use it, for the performance of a part of the work and/or provision of services by them.

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<sup>156</sup> [http://mpe.kmu.gov.ua/minugol/control/uk/publish/article?art\\_id=245252287&cat\\_id=35109](http://mpe.kmu.gov.ua/minugol/control/uk/publish/article?art_id=245252287&cat_id=35109)

<sup>157</sup> <http://zakon0.rada.gov.ua/laws/show/423-95-%D0%>

<sup>158</sup> <http://www.kmu.gov.ua/document/249935381/R0275.doc>

<sup>159</sup> <http://zakon2.rada.gov.ua/laws/show/1079-2016-%D1%80/paran146#n146>

<sup>160</sup> [http://www.geo.gov.ua/sites/default/files/imce/postanova\\_423.doc](http://www.geo.gov.ua/sites/default/files/imce/postanova_423.doc)

<sup>161</sup> <https://menr.gov.ua/news/31745.html>

<sup>162</sup> [http://www.drs.gov.ua/wp-content/uploads/2017/11/12529\\_08\\_11\\_17.pdf](http://www.drs.gov.ua/wp-content/uploads/2017/11/12529_08_11_17.pdf)

<sup>163</sup> <https://menr.gov.ua/news/31835.html>



# Business Climate

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The process of the NEURC members rotation has been started: formation of the composition of the Competition Commission, which managed to hold two meetings, has been completed. The Commission members agreed organizational issues and started to develop the Rules of the Competition Commission and the Procedure for Holding an Open Competitive Selection of Candidates for the NEURC members. It is expected that the competition will be announced in December, so the appointment of the Regulator's new members will be no later than in mid-April.

From November 27, there are three members left in the NEURC, which is not enough to make any decisions. Unofficially, the regulator remained without a quorum earlier - on November 13, when one of the members took sick leave and did not take part in the meetings. This prevented timely adoption of a number of important decisions regarding the work of the energy sector for the next year and for the period of absence of a quorum.

MPs suggest resolving the current situation by granting the President the authority to appoint the NEURC members without holding a competition, but not more than for 6 months. The relevant draft law No. 7342 was registered with the Verkhovna Rada. It is worth noting that the draft document does not contain any precautionary measures regarding the rights and powers of these temporary members, which includes the risk of political influence.

For the second time in 2017, MPs try to reverse the successful work of the ProZorro public procurement system by means legislative changes. This time, under the patriotic name "Buy Ukrainian, Pay to Ukrainians", it is proposed to introduce a so-called assessment of the local component. Thus, companies with a share of more than 20% of the local component will have an advantage over others. In particular, if the offer of the Ukrainian company is more expensive, the customer will still be forced to choose it. This not only contradicts the Association Agreement in terms of a non-discriminatory approach to all companies, but also creates new corruption risks, as suppliers need to provide at least 23 different certificates to confirm their Ukrainian origin.

At the same time, MPs supported in the first reading one more draft law related to ProZorro - on monitoring of procurement. Innovations have expanded the powers of the audit service, which is important for providing prompt response to violations both on the part of customers and suppliers. If amendments take effect, this will help to improve the level of competition in the field of public procurement.

Against this backdrop, there have been some positive changes that contribute to the improvement of the business climate as a whole. For example, joining the Convention on Pan-Euro-Mediterranean Preferential Rules of Origin will facilitate the terms of trade and increase the use of export potential. From 1 February 2018, the use of the Single Window information system by enterprises and state authorities will become mandatory. Such a decision, besides automatic exchange of the information on the cargo passing through the Ukrainian border, and the results of its state control, also introduces the reduction of customs clearance time. The President Petro Poroshenko also signed the Law on Electronic Trust Services, which will ensure the active development of cross-border cooperation and integration of Ukraine into the world electronic information space, and the Ministry of Economic Development has launched a portal where small and medium enterprises will be able to receive information on additional financing for development and access to European markets.

## **Article 277 on the Regulator (provisions of Directive 2009/72/EC and Directive 2009/73/EC in parts on the regulator)**

On November 17, the President of Ukraine, by its Decree No. 371/2017 On Determining the Persons Included in the Competition Commission for the Selection of Candidates for the NEURC Members,

# Business Climate

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appointed the last two members of the Competition Commission, on his quota, - V.Kotko (the president of the All-Ukrainian public organization “Energy Association of Ukraine”), and S.Potashnyk (the president of the All-Ukrainian public organization “Ukrhydroenergo Association”)<sup>164</sup>. This happened in 10 days prior to the onset of the next NEURC rotation period. Thus, the Competition Commission for the Selection of Candidates for the NEURC Members has been fully formed and started its work.

On November 24, the first organizational meeting of the Competition Commission, on which V. Kotko was elected as the chairman of the Commission and S. Holikova - as the Secretary, was held, and on November 30, the Commission held its second meeting, at which it considered and adopted the Rules and Procedures and discussed the main sections of the Terms and Conditions of Holding the Competition. Given the circumstances associated with the lack of a quorum in the NEURC and in order to save time, the commission members agreed that the draft documents would be published only for informing and not for discussion and/or commenting by other stakeholders, for example, the public or business representatives. The Commission sent an appeal to the EU Delegation to Ukraine, the Energy Community Secretariat, the World Bank, the European Bank for Reconstruction and Development, and USAID on the presence of their representatives at its meetings, as well as making proposals and opinions as to the documents to be considered by the Competition Commission.

The official website of the Competition Commission (a separate section<sup>165</sup>, where the announcement of the Competition Committee’s meeting, the agenda, links to online broadcasting and video of previous meetings, minutes of meetings, projects and approved documents, information about all the members of the Competition Committee and all candidates who submitted the documents, as well as the results of consideration of their candidatures and other information are published), there is a direct broadcast of its meetings through the channels of the VRU and the President of Ukraine<sup>166</sup>. All information and materials are also published on the website of the President in “Announcements” section<sup>167</sup>. The Organizing Committee of the Competition Commission, in accordance with the Law on the NEURC, was ensured by the Secretariat of the Verkhovna Rada Committee on FEC, Nuclear Policy and Nuclear Safety.

The transitional provisions of the Law on the NEURC provide for the rotation of all members of the existing composition. Until November 27, the NEURC still had the necessary quorum for making decisions consisting of 4 persons, but from November 14, the Regulator could not practically hold hearings, as one of the members (B. Tsyganenko) was on sick leave. On November 27, the President of Ukraine dismissed B. Tsyfanenko from the position of a NEURC member by the Decree No. 390/2017, and only 3 members remained in the commission, which is less than the quorum established by law<sup>168</sup>. Unless the Competition Commission holds a competition and selects new NEURC members, the regulator remains legally incapable. In fact, the work of the NEURC stopped from November 13, when the fourth member B.Tsyganenko took sick leave. This collision arose as a result of a significant delay with the approval of the composition of the competition commission, which was to elect new NEURC members. Thus, as reported at the last NEURC meeting on November 24<sup>169</sup>, the Commission was not able to approve 154 documents, including those that determine the work of the energy sector for the next year and during the absence of a quorum as a regulator. In particular,

- water supply and sewage tariffs for 52 companies;
- tariffs for the production, supply and transportation of heat energy for 46 companies;

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<sup>164</sup> <http://www.president.gov.ua/documents/3712017-23014>

<sup>165</sup> [http://kompek.rada.gov.ua/documents/konkurs\\_com/](http://kompek.rada.gov.ua/documents/konkurs_com/)

<sup>166</sup> [http://kompek.rada.gov.ua/documents/konkurs\\_com/](http://kompek.rada.gov.ua/documents/konkurs_com/)

<sup>167</sup> <http://www.president.gov.ua/administration/ogoloshennya>

<sup>168</sup> <http://www.president.gov.ua/documents/3902017-23106>

<sup>169</sup> <http://www.nerc.gov.ua/?news=7055>

# Business Climate

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- the tariffs for production (for NPPs, HPPs/PSPs, 34 RES plants), electricity transmission by main (Ukrenergo) and distribution networks, the wholesale market price (Energoynok) and the tariff for the delivery of electricity at the regulated tariff (34 oblenergos /regional energy companies/)- 65 companies in total;
- Investment programs for 83 companies, including Energoatom, Ukrhydroenergo, Ukrenergo, the majority of oblgazes (regional gas companies) and oblenergos (regional energy companies).

To restore the regulator's authority, in November, MPs O. Riabchyn (Batkivshchyna) and V. Voitsytska (Samopomich) registered the draft law No. 7342<sup>170</sup>, intended to give additional powers to the President to temporarily appoint commissioners lacking in a quorum, without a competitive selection, by the relevant decree, unless the Regulator's members are selected on a competitive basis. The draft law does not specify whether these should be exclusively new members or may be the members from the old composition. The authors of the draft law believe that it is the President who must assume responsibility for the situation with the failure of the NEURC to make decisions and appoint temporary commissioners for the winter until the completion is held. The proposed draft law stipulates that as soon as the competition committee decides on the nominations of new permanent NEURC members, "temporary" commissioners will lose their powers. In this approach, there are significant risks, since changing the procedure for appointing members of a new body may endanger the standards of independence, professionalism and impartiality of the NEURC members that may be appointed contrary to the current procedure.

The chairman of the NEURC is also trying to take steps to unblock activity: in this regard, he appealed to the Prime Minister with a letter<sup>171</sup> asking for assistance in amending the Law on the regulator in order to restore the quorum. At the same time, it became known<sup>172</sup> that the Energy Community Secretariat continues to work on the analysis of the NEURC work and plans to complete an independent audit of the Ukrainian energy regulator by the end of the year.

## Articles 148-156 on public procurement (provisions of Directive 2014/25/EC)

On 9 November 2017, the draft Law No. 4738-Д on Amending the Law of Ukraine On Public Procurement and some other laws of Ukraine on monitoring procurement<sup>173</sup> was adopted in the first reading. The need for adoption of the draft law is caused by the following factors:

- inconsistency of laws on monitoring procurement, which makes it impossible to monitor procurement in a qualitative manner;
- systematic violations during procurements at all stages identified by the bodies of the State Audit Service and the Accounting Chamber;
- lack of effective mechanisms for monitoring procurement at the legislative level.

The draft law is aimed at preventing losses of public funds through the implementation of effective monitoring of procurement by state financial control authorities in order to prevent violations and to ensure compliance with the legislation by customers.

On November 14, the Verkhovna Rada has included the draft law No. 7206 entitled "Buy Ukrainian, Pay to Ukrainians"<sup>174</sup> in the agenda. It is proposed to introduce the concept of a "reduced price", which takes into

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<sup>170</sup> [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?id=&pf3511=62981](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=62981)

<sup>171</sup> [https://biz.censor.net.ua/events/3036462/vovk\\_poprosil\\_grovysmana\\_pomoch\\_razblokirovat\\_rabotu\\_natskomissii\\_po\\_tarifam\\_dokument](https://biz.censor.net.ua/events/3036462/vovk_poprosil_grovysmana_pomoch_razblokirovat_rabotu_natskomissii_po_tarifam_dokument)

<sup>172</sup> <http://reform.energy/news/sekretariat-energosoobshchestva-planiruet-do-kontsa-2017-g-zavershit-analiz-deyatelnosti-nkreku-3953>

<sup>173</sup> [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_2?pf3516=4738-%D0%B4&skl=9](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_2?pf3516=4738-%D0%B4&skl=9)

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account the local component and is calculated on the basis of various variables. In order to confirm that the supplier is domestic and not foreign, he will have to obtain at least 23 certificates. Subject to confirmation that a company is Ukrainian, the customer is obliged to give him an advantage over a foreign supplier, even if the domestic offer is more expensive. According to the authors, this will promote the development of industrial production and small and medium enterprises.

Contrary to MPs who supported putting of the draft law No. 7206 on the agenda, the expert community stated that the initiative contradicted the provisions of the Association Agreement in “Public Procurement” section regarding the principle of non-discriminatory approach to all suppliers. In addition, new prerequisites for corruption will be created, since, in order to prove its origin, the supplier must collect a large number of certificates (23 supporting documents)<sup>175</sup>.

## Article 379 on creation of favourable conditions for doing business

On November 9, the VRU supported the draft Law No. 7066 On the Privatization of State Property<sup>176</sup> in the first reading. The draft law will be able to replace seven effective separate laws on privatization, will help expand the range of potential investors, since it will strengthen the protection of their rights, and will allow the transition to market pricing for state-owned facilities.

The Ministry of Economic Development and Trade has created an official portal of the EU Support Program for Small and Medium Business in Ukraine - [cosme.me.gov.ua](http://cosme.me.gov.ua)<sup>177</sup>. It provides information for small and medium-sized businesses on opportunities to enter new markets and interchange of experiences with the EU. Read more in the monitoring report “Ukraine and the Association Agreement: how to prevent a storm?”<sup>178</sup>.

The President signed the Law on Electronic Trust Services - it enters into force one year from the date of publication, except for Article 10, which takes effect from the day of the publication of this Law<sup>179</sup>. Read more in the monitoring report for October 2017<sup>180</sup>.

The Verkhovna Rada has supported and submitted the draft Law on Amendments to Certain Legislative Acts on Ensuring the Observance of the Rights of Participants in Criminal Proceedings and Other Persons by Law Enforcement Bodies During the Pre-Trial Investigation<sup>181</sup> to the President to be signed. The draft law introduces a number of innovations that will make it impossible to repress business. The document was developed on the initiative of the Prime Minister by a working group consisting of representatives of the Ministry of Justice, business and law enforcement agencies<sup>182</sup>.

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<sup>174</sup> [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=62736](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=62736)

<sup>175</sup> <http://rpr.org.ua/news/hromadskist-zaklykaje-deputativ-vidhylyty-zakonoproekt-7206-yakij-znyschuje-konkurenciyu-na-publichnyh-zakupivlyah/>

<sup>176</sup> [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=62455](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=62455)

<http://www.me.gov.ua/News/Detail?lang=uk-UA&id=0d9c2ae0-a04f-47c7-ba6a-2bd7abc2f27f&title=VerkhovnaRadaUkhvalilaUPershomuChitanniZakonoproektproPrivatizatsiiuDerzhavnogoMaina>

<sup>177</sup> <http://www.me.gov.ua/News/Detail?lang=uk-UA&id=f038eafd-9f2e-499e-8407-133f339f975f&title=MinekonomroztvikuZapuskaPortalizMozhlyvostiamiDliaMalogoSerednogoBiznesu>

<sup>178</sup> <http://enref.org/books/monitorynhovij-zvit-ukrajina-ta-uhoda-pro-asotsiatsiyu-yak-zapobihny-buri/>

<sup>179</sup> <http://www.president.gov.ua/news/prezident-pidpisav-zakon-pro-elektronni-dovirchi-poslugi-44298>

<sup>180</sup> <http://enref.org/books/monitorynhovij-zvit-pro-prosuvannya-ukrajiny-u-vikonanni-uhody-pro-asotsiatsiyu-z-evropejskym-soyuzom-u-sferah-enerhetyky-ta-dovkillya-za-zhovten-2017-roku/>

<sup>181</sup> [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=62853](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=62853)

<sup>182</sup> [http://www.kmu.gov.ua/control/uk/publish/article?art\\_id=250405261&cat\\_id=244276429](http://www.kmu.gov.ua/control/uk/publish/article?art_id=250405261&cat_id=244276429)

# Business Climate

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## Articles 27-49 on the access of goods to markets

The President P. Poroshenko signed<sup>183</sup> the Law on Ukraine's Accession to the Regional Convention on Pan-Euro-Mediterranean Preferential Rules of Origin, adopted<sup>184</sup> by the Verkhovna Rada of Ukraine on November 8. The Convention established identical provisions on the origin of goods traded by states under free trade agreements. It also provides for the possibility of diagonal cumulation, that is, it allows its member states to use raw materials and components of each other, and not only national ones, while preserving preferential terms of trade.

On November 15, the Cabinet of Ministers of Ukraine decided to support<sup>185</sup> the draft Law on the Customs Tariff of Ukraine<sup>186</sup>. The draft law introduces a new classification of individual products in order to harmonize Ukrainian legislation with international law and to facilitate international trade for Ukraine. The basis for the customs tariff will be a new version of the Ukrainian Classification of Goods for Foreign Economic Activity (UCGFEA), which is based on the Harmonized Commodity Description and Coding System (HS) 2017 and the Combined Nomenclature of the European Union.

On November 22, the government approved the decision to introduce the mandatory use of the "single window" information system<sup>187</sup> by enterprises and state authorities from 1 February 2018.

According to the results of 9 months of 2017, exports of goods and services amounted to USD 38.1 billion and increased by USD 6 bn compared with the same period of 2016<sup>188</sup>. Exports of Ukrainian goods amounted to USD 31.3 bn, services - USD 7.8 billion, that is, 82.3% falls on exports of goods; 17.7% - on export of services. The export of Ukrainian services for 9 months of 2017 is represented by transport services - 55.9%, of which about 51.9% falls on the transportation of natural gas and oil, due to which Ukraine remains their net exporter. The main trading partner is the European Union (aggregate share was 40.2%).

## Articles 255-256 on anti-competitive actions and mergers

On 9 November 2017, the draft law No. 6723 on amendments to some laws of Ukraine on the protection of economic competition<sup>189</sup> was adopted at first reading. Details of this initiative can be found in the monitoring report for July 2017<sup>190</sup>.

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<sup>183</sup> <http://www.president.gov.ua/news/prezident-pidpisav-zakon-yakij-spriyatime-posilennyu-torgove-44754>

<sup>184</sup> <http://zakon5.rada.gov.ua/laws/show/2187-19>

<sup>185</sup> <http://www.me.gov.ua/News/Detail?lang=uk-UA&id=5ec84df8-594c-4f5d-a0bf-4cb13866389a&title=UriadPidtrimavZakonoproektProNovuMizhnarodnuKlasifikatsiiuTovarivDliaSplatMitnogoTarifu>

<sup>186</sup> [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=61743](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=61743)

<sup>187</sup> [http://www.kmu.gov.ua/control/uk/publish/article?art\\_id=250443668&cat\\_id=244276429](http://www.kmu.gov.ua/control/uk/publish/article?art_id=250443668&cat_id=244276429)

<sup>188</sup> [http://www.kmu.gov.ua/control/uk/publish/article?art\\_id=250464091&cat\\_id=244276429](http://www.kmu.gov.ua/control/uk/publish/article?art_id=250464091&cat_id=244276429)

<sup>189</sup> <http://zakon0.rada.gov.ua/laws/show/2196-19>

<sup>190</sup> <http://enref.org/boos/monitorynhoviy-zvit-pro-prosuvannya-ukrajiny-u-vykonanni-uhody-pro-asotsiatsiyu-z-evropejskym-soyuzom-u-sferah-enerhetyky-ta-dovkilliya-za-lypen-2017-roku/>



# Methodology

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## ANNEX 1.

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

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

- Article 269, Chapter 11, Title IV, Directive 2009/72/EC (market-related provisions)
- Article 270, Chapter 11, Title IV, Regulation (EC) 714/2009
- Article 271, Chapter 11, Title IV, Regulation (EC) 714/2009
- Article 273, Chapter 11, Title IV, Regulation (EC) 714/2009, Directive 2009/72/EC
- Article 274, Chapter 11, Title IV, Regulation (EC) 714/2009, Directive 2009/72/EC
- Article 305, Chapter 14, Title IV, Directive 2009/72/EC, Directive 2005/89/EC
- Article 338, Chapter 1, Title V
- Article 338, Chapter 1, Title V, Cooperation Agreements with IFIs
- Article 339, Chapter 1, Title V, coal market
- Article 342, Chapter 1, Title V, cooperation in the nuclear safety sector, Council Directive 2014/87/Euratom, Council Directive 2013/59/Euratom, Council Directive 2006/117/Euratom
- Article 342, Chapter 1, Title V, cooperation in the nuclear safety sector

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

- Articles 338, 341, Directive 2009/73/EC (market-related provisions)
- Articles 338, 341, Regulation (EC) 715/2009
- Articles 338, 341, Directive 2004/67/EC + Annex XXVI (Early Warning Mechanism), Articles 275 (Unauthorised taking of energy goods), 276 (Interruption), 309 and 314 (resolution of disputes) of the Association Agreement
- Chapter 11 Trade-related energy, in particular Articles 269 (Domestic regulated prices), 270 (Prohibition of dual pricing), 271 (Customs duties and quantitative restrictions), 272 (Transit) and 273–274 (Transport, cooperation on infrastructure)
- Annex XXVII to Chapter 1 Energy cooperation, including nuclear issues — Directive 94/22/EC + Articles 279–280 (Access to and exercise of the activities of prospecting, exploring for and producing hydrocarbons, and licensing conditions)

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

- Directive 2010/30/EU
- Directive 2010/31/EU
- Directive 2006/32/EU
- Directive 2012/27/EU
- Directive 2009/72/EC (social issues)
- Articles 338, 341 of the Association Agreement
- Directive 2009/73/EC (social issues)
- Articles 338, 341 of the Association Agreement

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

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

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

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

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

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

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Article 263, Chapter 10 (Title IV TRADE AND TRADE-RELATED MATTERS) of the Association Agreement  
Article 267, Chapter 10 (Title IV TRADE AND TRADE-RELATED MATTERS) of the Association Agreement  
Article 277, Chapter 11 (Title IV TRADE AND TRADE-RELATED MATTERS) of the Association Agreement and  
Directives 2003/54/EC and 2003/55/EC (as regards the regulatory authority)  
Articles 355-359, Chapter 5, (Title V ECONOMIC AND SECTOR COOPERATION) of the Association Agreement  
and Directive 2008/92/EC  
Article 379, Chapter 10 (Title V ECONOMIC AND SECTOR COOPERATION) of the Association Agreement

# Glossary

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## ANNEX 2.

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

#### *Gas*

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

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

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

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

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

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

#### *Electricity and Nuclear Security*

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

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

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

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

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

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

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

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

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

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



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

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

## *Energy Efficiency and Social Issues*

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

This Directive regulates labelling of energy-related products and provision of information to consumers relating to their consumption of electric energy. It applies to products which have a direct or indirect impact on the consumption of energy and on other resources during use. Suppliers placing products on the market must ensure that such products are labelled with the information about their consumption of energy and other resources. Suppliers must also produce technical documentation to include: a general description of the product; the results of design calculations carried out; test reports; the references allowing identification of similar models. The technical documentation must be available for inspection purposes for a period ending five years. Suppliers must provide the labels and product-related information free of charge to dealers, and the latter must display labels properly, in a visible and legible manner.

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

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

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

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

- annual 1.5% energy savings resulting from implementing energy efficiency measures by distribution network operators and suppliers;
- enhancing energy performance of heating systems, installation of double-glazed windows and roof insulation;
- purchase of buildings, products and services with high energy-efficiency performance by public bodies;
- annual energy modernization of at least 3% of the total floor area of buildings owned and occupied by public bodies;
- expanding rights and possibilities of consumers in the area of energy management which includes easy and free access to the metering data on the actual consumption;

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- national incentives for small and medium-sized enterprises to conduct energy audit that should be mandatory for all large enterprises;
- monitoring of the energy performance of new energy generating capacities.

## *Environment and Renewable Energy Sources*

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

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

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

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

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

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

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

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

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

This Directive establishes ambient air quality and ambient air quality management standards. For this purpose, it establishes upper and lower assessment thresholds, target and threshold values, sets

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objectives for the reduction of the effect of particulate matters, defines and classifies zones and agglomerations, introduces the systems of informing the public and ambient air quality assessment with respect to various pollutants. Where, in a given zone or agglomeration, there is a risk that the levels of pollutants will exceed the alert thresholds, short-term action plans must be drawn up.

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

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

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

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

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

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

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

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

## Oil

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

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

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

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

## **Directive 94/63/EC on the control of volatile organic compound (VOC) emissions resulting from the storage of petrol and its distribution from terminals to service stations, as amended by Regulation No. 1882/2003**<sup>191</sup>

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

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

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

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

### *Business Climate*

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

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

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

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

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

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<sup>191</sup> The official translation has a lot of mistakes resulting from inaccurate translation

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

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

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