

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

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

The key objectives of the project are:

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

The Project is supported by the European Union within the framework of EU4Energy initiative and co-funded by the International Renaissance Foundation

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Executive Summary

Experts from the **Gas** task force noted the government's decision on the first stage of monetization of subsidies and the setting of new tariffs for gas transmission services by the regulator. At the same time, there is still no progress on the unbundling issue; discussions are continuing on optimal models and ways to implement it.

The **Electricity and Nuclear Safety** task force noted that the state-owned coal industry of Ukraine is in critical condition. Insufficient financing of the industry (technical re-equipment, modernization, opening up new longwall faces) and the lack of measures to eliminate unprofitable coal mining and coal-processing enterprises are the main reasons for the decline of the state coal sector.

Experts from the **Energy Efficiency and Social Issues** task force consider the formation of a quorum of the Supervisory Board of the newly established Energy Efficiency Fund, as well as providing by the Ministry of Finance of its vision of monetization of utility subsidies, which, however, was subject to widespread criticism from public experts and other stakeholders, as the most important events in November.

In the field of **Environment**, in November 2018, the Ministry of Environment and Natural Resources published the draft Concept for the Implementation of State Policy on Industrial Pollution, which is an important step towards the introduction of an integrated permit for enterprises in Ukraine. Measures were also taken to improve the access to environmental information – the government approved the concept for creating the “Open Environment” system.

The experts of the **Oil and Oil Products** sector welcome the adoption of a number of decisions aimed at the implementation of Directive 94/22/EC in Ukraine, in particular the adoption of a new procedure for the use of geological information, setting criteria for assessing the risks of field development, and the implementation of sales of special permits for the use of subsoil through ProZorro.Sales system. The increased control over the circulation of aviation fuel and the introduction of licensing of oil products manufacturing, storing and sale activities are taken as positive. Experts are concerned about possible non-fulfillment of the plan of the government's priority actions in the implementation of Directives 99/32/EC, 98/70/EC and 94/63/EC.

Experts from the **Business Climate** task force did not record progress in the implementation of the Agreement during the reporting month. On the contrary, the vote on the draft law that significantly improved the laws on public procurement and was aimed at simplifying the sub-threshold procurement failed. Through lawsuits, the competition for 2 vacant positions in the NEURC has also been blocked for 6 months already.

The most used abbreviations:

DHC – district heating company
DSO – distribution system operator
ESCO – energy service company
IAEA – International Atomic Energy Agency
MBCA – multi-apartment building co-owners association
NEURC – National Energy and Public Utilities Regulatory Commission
NNEGC – National Nuclear Energy Generating Company

PSO – public service obligations
RNPP – Rivne Nuclear Power Plant
SAEZM – State Agency on Exclusion Zone Management
SNRI – State Nuclear Regulatory Inspectorate
SUNPP – South Ukraine Nuclear Power Plant
TSO – transmission system operator
WANO – World Association of Nuclear Operators

Gas

In November, MPs adopted the decision to normalize the term “new well”, thus opening up the possibility for unhindered use of reduced royalty for the use of subsoil in case of gas production from new wells.

Despite the fact that none of the legislative initiatives registered by the Verkhovna Rada in October on changes in the price of natural gas for households and DHCs was not considered, MPs registered a number of new proposals designed to transform the Government’s decision to increase it. In addition, the VRU also registered two draft laws on the regulation of the limits of liability of gas suppliers for suspension of supply.

Given the concentration of the Cabinet of Ministers on solving current problems, in particular the problems of the heating season, no significant government decisions were made in the reform agenda during November. Similarly, in the public realm, there are no reports of any decisions on the way of unbundling.

The NEURC settled disputes in favor of household consumers as regards additional charge of volumes, which take into account the difference caused by bringing to standard conditions (20°C), prohibiting 42 DSOs from making such additional charge.

At the same time, through the unpreparedness of a large part of gas market participants to perform the operations provided for by daily gas balancing regime through the information platform of the TSO – Ukrtransgaz, the regulator had to postpone the final implementation of the Regulation 312/2014 until March 1, 2019.

Meanwhile, the scope of application of the EU gas legislation in Ukraine has been expanded. On November 29, a meeting of the Ministerial Council of the Energy Community, which decided on the adoption of the adapted wording of Regulation (EC) 1227/2011 on energy markets integrity and transparency (REMIT), was held. At the same time, as stated in the directives of the Ukrainian delegation, given the need for legislative changes (in particular, vesting the NEURC with authorities to conduct investigations in the gas market), the proposed terms for transposing REMIT are considered “brief”.

In addition, the Permanent High Level Group of the Energy Community decided to implement two network codes. This refers to Regulation (EU) 2017/459 establishing a network code on capacity allocation mechanisms in gas transmission systems and Regulation (EU) 2017/460 establishing a network code on harmonised transmission tariff structures for gas.

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

Taking into account that the draft law on clarification of the terminology of the Tax Code of Ukraine (No. 9158¹), under which it was planned to correct the definition of the term “new well”, was not put on the agenda of the current session of the Verkhovna Rada, MPs proposed to change this term to the correct one² as an amendment during the consideration of the draft law No. 8487³ and voted for it. Due to the approved adjustment (Law No. 2611-VIII⁴, which entered into force), the problem of the use of preferential rent (6% and 12%) for the extraction of gas from new wells was regulated⁵.

Referring to the need to define the limits of responsibility of natural gas suppliers regarding instances of non-provision/cessation/restriction of gas supply more clearly, especially in the absence of the fault of the consumer for the reasons which caused them, MPs registered the draft law (No. 9328⁶) intended to

¹ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=64734

² For more details – see the monitoring report for October 2018.

³ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=64235

⁴ <http://zakon.rada.gov.ua/laws/show/2611-viii>

⁵ In November, the VRU registered another draft on amendments to the Tax Code of Ukraine (No. 9302) with a proposal to distribute reduced royalty for gas, for extraction of oil and gas condensate from new wells (http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=64955)

⁶ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=64989

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regulate the relevant mechanism. The proposed amendments to the Law On Housing and Utilities and the Law On the Natural Gas Market consist in setting the lower limit of the amount of the fine, which the supplier is obliged to pay for the period of not providing the service or providing it in full – at least 0.01% of the tariff per day, and depriving it of the right to suspend/restrict the supply if the debt was not through the fault of consumers. It is also regulated that in this case the communal service provider, including the natural gas supplier, is not exempted from liability for the failure to provide the service.

According to the second draft law registered in this area (No. 9297⁷), it is proposed to legitimize even more stringent measures for the untimely natural gas supply (through changes to the Criminal Code). In the event that such supply results in “substantial damage to the rights, freedoms and interests of individual citizens, state or public interests or interests of certain legal entities, protected by the law” – the sanctions include a fine of UAH 5,250 to 8,500 or corrective labor for a term up to two years, or restriction of liberty up to three years, with the deprivation of rights to certain positions and activities. In case of untimely natural gas supply, which resulted in grave consequences – imprisonment for a term up to three years, with a fine of UAH 4,250 to 12,750 or without it, or – from two to five years, with the deprivation of the right to hold certain positions and carry out certain activities.

The series of November initiatives related to attempts by MPs to legislatively influence the change in the price of natural gas for households and DHCs and the procedure for its formation, started with the registration of the draft resolution of the VRU No. 9265⁸, the essence of which is to abolish the CMU resolution No. 867⁹ adopted in October on approval of a new regulation on imposing public service obligations (PSO) and the renewal of the previous gas price for the households and DHCs (according to the CMU resolution No. 187). In addition, the mentioned initiative provides for the directing on the needs of the households all the gas extracted in the territory of Ukraine by state-owned and affiliated companies (including those under joint-activity agreements), as well as the moratorium on raising prices for the households for a period up to January 1, 2020.

In addition, during the month, the VRU registered 3 draft resolutions of the Verkhovna Rada, alternative to No. 9265, which also provide for the abolition of the CMU decision on raising the price, but regulate other options for establishing a new price for natural gas for the households, namely: No. 9265-1¹⁰, No. 9265-2¹¹, No. 9265-3¹². According to the draft of the first of them, the price of gas for the households is defined as the sum of: the prices of sale of Naftogaz by the market entities of natural gas extracted in the territory of Ukraine (calculated, if the norm of profitability is not more than 12%), tariffs for gas transportation by main and distributive gas pipelines, supply tariff (the Naftogaz revenue is deducted from the price structure, collection in the form of a target surcharge, rent payments for gas production and VAT). According to the draft second alternative regulation, it is similarly provided for to “set prices for natural gas at the level of the price of gas of own production”, but without any clarification. At the same time, the draft law No. 9265-2 contains an additional requirement for the introduction of a new social norm for lonely subsidy recipients for a heating area of 75 sq. m. The author of the draft resolution No. 9265-3 seeks to implement the principles of free trade and equality of natural gas market entities, and, in addition to abolishing the price increase, proposed: “To introduce a moratorium on state regulation of prices for natural gas, except for the market method”.

The list of registered initiatives of the mentioned topic is completed by the draft VRU regulation No. 9283¹³, which provides for: to officially recognize the necessity of revision of prices and tariffs for housing and communal services for the households, including gas prices downward; hear reports and information of all senior officials involved in the formation of tariffs (Government, Naftogaz group, Regulator, cities of

⁷ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=64948

⁸ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=64896

⁹ <https://www.kmu.gov.ua/ua/npas/pro-zatverdzhennya-polozhennya-pro-pokladennya-specialnih-obov'yazkiv-na-subyektiv-rinku-prirodnogo-gazu-dlya-zabezpechennya-zagalnosuspilnih-interesiv-u-procesi-funkcionuvannya-rinku-prirodnogo-gazu>

¹⁰ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=64899

¹¹ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=64902

¹² http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=64940

¹³ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=64928

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regional significance, etc.); to consider all the draft laws currently registered in this area and recommend the VRU to take appropriate decisions on the level of tariffs, taking into account the results of hearing the reports and discussing them.

As a result, currently 13 decisions to modify/terminate the Government's decision to raise the price of gas for the households are registered in the VRU.

In response to an attempt by representatives of the Accounting Chamber to carry out a check of Naftogaz's activities¹⁴, the company published its position¹⁵ stating that the Accounting Chamber does not have legal grounds for auditing the effectiveness at the company's facilities, whereas the State Audit Service and the State Fiscal Service have such a right. Meanwhile, in order to prevent this conflict, MPs registered the draft VRU resolution (No. 9318¹⁶), which provides for the adoption of the decision on the implementation of the full state external audit of Naftogaz's activities for 2017-2018 by the Accounting Chamber.

The relevant VRU committee on fuel and energy, with the participation of the British Embassy in Ukraine, held a round table on the topic "Achieving the Goals of Gas Production by 2020. Are All Opportunities Used?"¹⁷ The main subject of the discussions was to assess the realities of the strategic tasks of the gas sector and the measures necessary for progress in managing gas resources¹⁸.

Meanwhile, the Cabinet of Ministers approved the new procedure for the disposal of geological information (Resolution No. 939¹⁹), aimed at achieving the openness and availability of information on the state-owned mineral resources. Amendments approved to the procedure are intended to modernize the legal relations of the entities disposing of this geological information and to facilitate the creation of preconditions for its involvement in market circulation.

Taking into account the problems of the current heating season through the refusal of Naftogaz to connect a number of district heating enterprises that are large debtors for the used gas in previous periods, the Cabinet of Ministers has made several decisions aimed at ensuring uninterrupted supply of gas to heat producers (DHCs and CHPs). As Deputy Prime Minister G.Zubko informed²⁰, the Government has set a "direct ban" to disconnect heat supply companies from gas and energy supply during the heating season. The Government also regulated certain issues of settlements of these enterprises for gas with Naftogaz (Resolution No. 942)²¹. Firstly, by January 1, 2020, the procedure for distributing funds received on accounts with a special mode for settlements with the supplier for PSO has been extended (Resolution No. 217 was amended²²). Secondly, for the period from December 1, 2018 to April 1, 2019, the Government weakened the requirements for the supply of gas to DHCs and CHPs under the new regulation on PSO (Resolution No. 867 was amended²³). In particular, the necessary level of payments for the previous period was reduced to obtain the right to supply from 90% to 78%, and for heat producers under the control of the State Property Fund of Ukraine – up to 60% (from November 16, 2018). From the above decisions, it follows that the practice of applying a number of positions of the regulation on PSO in conditions of the heating season has necessitated their urgent adjustment.

¹⁴ <http://reform.energy/news/naftogaz-otkazal-schetnoy-palate-v-dostupe-k-materialam-kompanii-9725>

¹⁵ <http://www.naftogaz.com/www/3/nakweb.nsf/0/9324B9A955831004C22583530040E8AD?OpenDocument&year=2018&month=11&nt=%D0%9D%D0%BE%D0%B2%D0%B8%D0%BD%D0%B8&>

¹⁶ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=64976

¹⁷ <http://www.geo.gov.ua/kruglij-stil-na-temu-dosyagnennya-cilej-gazovidobutku-do-2020-roku-chi-vsi-mozhливosti-vikoristano/>

¹⁸ In November, State Service of Geology and Mineral Resources made the first step towards the introduction of open electronic auctions for the sale of special permits for the use of subsoil - entered into agreements with SE ProZorro.Sales, which will put them up for sale (<http://www.geo.gov.ua/prozorro-prodavati-prava-na-koristuvannya-nadrami-derzhgeonadra/>), and Ukrainian Energy Exchange, on which sites there will be placed bundles of offers for their advertisement (<http://www.geo.gov.ua/derzhgeonadra-vistavlyati-na-prodazh-specdozvoli-na-majdanchiku-ueb-cherez-system-prozoro-prodazhi/>)

¹⁹ <https://www.kmu.gov.ua/ua/npas/pitannya-rozporядzhennya-geologichnoyu-informaciyevu>

²⁰ <https://www.facebook.com/zubko.gennadiy/posts/2232560017026166>

²¹ <https://www.kmu.gov.ua/ua/npas/pro-vnesennya-zmin-do-postanov-kabinetu-ministriv-ukrayini-vid-18-cherovnya-2014-r-217-i-vid-19-zhovtnya-2018-r-867>

²² <http://zakon.rada.gov.ua/laws/show/217-2014-%D0%BF>

²³ <https://www.kmu.gov.ua/ua/npas/pro-zatverdzhennya-polozhennya-pro-pokladennya-specialnih-obov'yazkiv-na-sub'yektiv-rinku-prirodnogo-gazu-dlya-zabezpechennya-zagalnosuspilnih-interesiv-u-procesi-funkcionuvannya-rinku-prirodnogo-gazu>

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In addition, by its decision²⁴, the District Administrative Court of Kyiv suspended several paragraphs of the CMU Resolution No. 867, which provided for the transfer of the personal data of gas consumers to the Ministry of Finance without the consent of the consumers themselves. Grounds for the court decision – the requirements concerning the transfer of personal data to third parties are contrary to the Constitution of Ukraine and the Convention for the Protection of Human Rights and Fundamental Freedoms.

According to the media²⁵, the Energy Community Secretariat has negatively evaluated a generally new regulation on PSO, which came into force on November 1, 2018. In a letter to Prime Minister of Ukraine, the Director of the Secretariat J.Kopac noted²⁶ that the content and the procedure for adopting the act without public discussion and the avoidance of consultations with the Secretariat by the Government, contrary to the requirements of the Law on the Natural Gas Market are inadmissible. In his opinion, quoted by the media, this act “harms the opening of the Ukrainian natural gas market”.

Meanwhile, the Ministry of Energy and Coal Industry has published another draft resolution²⁷ on setting “social” standards for gas consumption for the households without meters, namely: for households using only a gas stove in the presence of central heating, it is proposed to adopt the standard of 5.8 cubic meters per month per person (from April to September) and 8.8 cubic meters per person (from October to March); for households with a stove and without central heating – 8.3 cubic meters per person (from April to September) and 13.7 cubic meters per person (from October to March); for households using a gas stove and a water heater, the Ministry of Energy and Coal Industry offers to fix the standard of 20 cubic meters per person (from April to September) and 25 cubic meters per person (from October to March).

Another project from the Ministry of Energy and Coal Industry²⁸ provides for approving the procedure and amounts of compensation for the households’ expenses on the independent, in accordance with the Law On Commercial Gas Metering, purchase and installation of individual gas meters. As stated in the document, the compensation of expenses to the household consumer shall be carried out at the expense of payment of such a consumer to the DSO for gas distribution services (in accordance with the tariff), while for the DSO, these costs should be compensated “from the relevant source in the State Budget of Ukraine”.

In parallel with ensuring the ongoing licensing activities, in November, the NEURC issued 4 new licenses for natural gas supply (Resolutions No. 1343, No. 1435, No. 1438, No. 1540)²⁹, one (No. 1374³⁰) was canceled and plans for the development of the DSO were approved for 38 licensees (Resolutions No. 1351-1369, No. 1420-1433, No. 1455-1458, No. 1557)³¹ – the Regulator approved 42 resolutions (No. 1487-1528)³² which prohibit DSOs to bring the volumes of natural gas consumed by household consumers to standard conditions³³ in commercial settlements for the gas consumed by the households.

According to the head of the NEURC O.Kryvenko³⁴, the monitoring carried out by the Regulator showed that the overwhelming majority of DSOs charged household consumers on the average up to additional 1.5% volume of gas in October this year (referring to losses as a result of the need to take into account the difference in bringing the actual temperature to standard conditions). The rationale for the prohibition is that the production and technological losses of DSOs through the temperature difference have already been taken into account in the tariff (in the amounts approved by the methods of the Ministry of Energy and Coal Industry). As a solution to the dilemma, the NEURC has proposed either to make amendments in the Law On the Natural Gas Market concerning temperature (to lower the set standard temperature 20°C

²⁴ <http://www.reyestr.court.gov.ua/Review/78228696>

²⁵ <https://www.epravda.com.ua/news/2018/11/8/642441/>

²⁶ Ibid.

²⁷ http://mpe.kmu.gov.ua/minugol/control/uk/publish/article?art_id=245325287&cat_id=35082

²⁸ http://mpe.kmu.gov.ua/minugol/control/uk/publish/article?art_id=245321726&cat_id=35082

²⁹ <http://www.nerc.gov.ua/?id=30382>

³⁰ <http://www.nerc.gov.ua/index.php?id=35987>

³¹ <http://www.nerc.gov.ua/?id=30382>

³² Ibid.

³³ According to the Order of the Ministry of Energy and Coal Industry No. 116 of 02.02.2004, the standard conditions for the supply and distribution of gas in Ukraine are: temperature +20 degrees Celsius and absolute pressure of 760 mm of mercury column.

³⁴ <http://reform.energy/news/nkreku-zapretila-operatoram-grs-provodit-donachisleniya-naseleniyu-v-platezhki-za-gaz-9701>

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to 0°C), or that the Ministry of Energy and Coal Industry should comply with the provisions of this law in terms of the development of the necessary technical regulations, and switch to measuring volumes of natural gas in energy units.

As a result of the monitoring of the natural gas market, which is implemented by the Regulator on a regular basis, the NEURC reported³⁵ that the maximum price of natural gas for consumers not covered by PSO (excluding tariffs for transportation and distribution of natural gas) amounted to UAH 15,205.80 for 1 tcm (including VAT) in October 2018.

Next time, in November, another month has been lost in the practical implementation of Naftogaz's reform. No initiatives were taken in the form of decisions or approved documents by either the Government or Naftogaz. Obviously, the director of the Energy Community Secretariat Ya. Kopach rightly accuses Naftogaz of delaying the implementation of this reform important for Ukraine³⁶. According to him, inhibition of unbundling threatens not only the reform of the market, but also the conclusion of a new long-term contract for the transit of Russian gas through Ukraine. Media cites J.Kopac's appeal to participants in a meeting of stakeholders in Brussels on November 29³⁷: "The EU will not be able to help in tripartite negotiations with Russia if it does not have a fundamental argument for a long-term transit contract – a certified TSO". J.Kopac also emphasized that the European Commission, together with the World Bank and the IMF, insists on signing an agreement on transfer of assets between Naftogaz and Mahistralni Gazoprovody Ukrainy (MGU) no later than the first quarter of 2019 and supporting it by the relevant Government's decision with a view to for the agreement to come into force on January 1, 2020, without any additional conditions.

How can one judge from the open source, an urgent meeting on the problem of "unbundling" proposed by the European Commission and international partners of Ukraine in a letter to Prime Minister V.Groysman³⁸ did not take place in November. On the other hand, on the same day, quite rigorous criticism was expressed by J.Kopac, head of the Secretariat, that is, on November 29, a meeting between Vice-President of the European Commission M.Šeřčovič and the head of the Ministry of Internal Affairs of Ukraine P.Klimkin³⁹ took place in Brussels. According to a statement from the European Commission based on the results of this meeting, the international partners and representatives of Naftogaz, Ukrtransgaz and Main Pipelines of Ukraine agreed on a joint action plan for the implementation of "unbundling"⁴⁰. According to this plan, Naftogaz "undertook to develop, by the end of January 2019, in cooperation with MGU, the necessary contractual framework for the creation of a certified TSO, in accordance with Ukrainian legislation and the Third Energy Package". In order to ensure full "unbundling" by January 1, 2020, it is provided for that this legal basis should be approved in the first months of 2019, which will require the active participation of the Cabinet of Ministers.

Against this backdrop, on November 13, the Ministry of Energy and Coal Industry published a draft Government resolution⁴¹ to implement Naftogaz's restructuring plan (CMU Resolution No. 496 of 01.07.2016). The document contains the measures necessary to approve the list and transfer a number of functions, assets, logistical, human and other resources, "the transfer of which will not negatively affect the implementation of the transit contract with PJSC Gazprom" to MGU by January 1, 2019.

Meanwhile, Naftogaz published new price proposals for December 2018⁴². Compared to November 2018

³⁵ <http://www.nerc.gov.ua/?news=8301>

³⁶ <https://interfax.com.ua/news/economic/550505.html>

³⁷ https://biz.censor.net.ua/news/3100337/energosoobschestvo_predupredilo_o_riskah_zatyagivaniya_protsesta_razdeleniya_naf_togaza_video

³⁸ <https://www.epravda.com.ua/news/2018/10/30/642134/>

³⁹ <http://reform.energy/news/naftogaz-obyazalsya-do-kontsa-yanvarya-2019-sovmestno-s-mgu-razrabotat-sistemu-kontraktov-anbandlinga-evrokomissiya-9843>

⁴⁰ https://ec.europa.eu/commission/commissioners/2014-2019/sefcovic/announcements/statement-following-meeting-between-vice-president-sefcovic-and-ukraines-foreign-affairs-minister_en

⁴¹ http://mpe.kmu.gov.ua/minugol/control/uk/publish/article?art_id=245317510&cat_id=35082

⁴² <http://www.naftogaz.com/www/3/nakweb.nsf/0/461CD857413062C0C225834D0031CD92?OpenDocument&year=2018&month=11&nt=%D0%9D%D0%BE%D0%B2%D0%B8%D0%BD%D0%B8&>

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prices, in December, gas prices for industrial and other consumers not covered by PSO were reduced by 16.5-17%. According to the new price list⁴³, the price of gas as a commodity (incl. of VAT) was fixed from December 1, 2018, at the following levels: for monthly gas needs up to 50 tcm inclusive, non-regulated monthly needs and monthly requirements of 50 tcm without prepayment – UAH 12,180.0 per tcm; for monthly needs of 50 tcm, subject to preliminary payment⁴⁴ – UAH 11,152.8 per tcm (the same price level – UAH 11,152.8 per tcm – is fixed for subsidiaries founded by Naftogaz, 100% of the authorized the capital of which belongs to the company).

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

In mid-November, against the background of the ongoing testing of Ukrtransgaz information platform to ensure daily balancing, with the participation of counterparties, the TSO announced its readiness to operate in the specified mode⁴⁵. However, on November 22, when the term for the acceptance of monthly nominations/renominations for the supply of natural gas for December under new electronic forms, previously extended by Ukrtransgaz, ended, it became clear⁴⁶ that the market participants failed to deal with the timely submission of nominations (only 103 out of 229 customers filed documents without violations).

In addition, it became apparent that, taking into account other parameters of the preparatory process, the gas market entities in general demonstrated an unacceptably low activity in this process. According to Ukrtransgaz data, as of November 22⁴⁷, since the beginning of the test period, only 17% of service providers regularly performed transactions in the informsystem (42% of registered users of the platform never entered the platform), none of the customers provided a bank guarantee under new forms approved by the TSO, and a third of DSOs in general ignored the need for preliminary testing and did not submit any data about their consumers to fill the database. Having informed the Regulator about it⁴⁸, the TSO was forced to state that the market was not ready for the introduction of daily balancing from December 1, 2018, and asked the NEURC to shift the deadlines again.

Thus, the Regulator had to postpone the final implementation of the reform of the balancing of Ukrainian GTS by the end of I quarter 2019 (Resolution No. 1573 of 30.11.18⁴⁹). According to the decision of the NEURC, from now until March 1, 2019 – the final date for the implementation of the EU Regulation No. 312/124 – Ukrtransgaz is required to report weekly to the NEURC on the progress and results of the test connection of gas market entities to the TSO information platform and filling it's databases, as well as – on the progress of the submission and acceptance of monthly nominations, which from January 1, 2019 should be submitted exclusively through the information platform in an electronic form with affixing an electronic signature of the person authorized by the customer.

A meeting of foreign and Ukrainian stakeholders⁵⁰, including representatives of gas transport operators, gas traders, regulators, as well as representatives of the Government and international financial organizations, the participants of which discussed the issue of creation of a specialized gas exchange in Ukraine, was held in Kyiv on November 2019. The roadmap for the implementation of this project was approved. It is planned to launch a full-fledged exchange with clearing services, as well the main measures needed for its creation, the plan of which is developed with the support of the EBRD and the Energy Community Secretariat, were

⁴³ <http://www.naftogaz.com/files/Information/Naftogaz-gas-prices-ne-PSO-December-2018.pdf>

⁴⁴ Payment during the calendar month preceding the month of gas supply

⁴⁵ <http://utg.ua/utg/media/news/2018/11/ukrtransgaz-proviv-pervynnu-reestraciju-spozvivachiv-v-informaciiii-platforni.html>

⁴⁶ <http://utg.ua/utg/media/news/2018/11/gazovyi-rynok-ne-gotovyi-do-perehodu-na-dobove-balansuvannya-z-01-grudnya-2018.html>

⁴⁷ Ibid.

⁴⁸ <http://utg.ua/img/news/2018/11/1001vyh-18-5898.pdf>

⁴⁹ <http://www.nerc.gov.ua/?id=36576>

⁵⁰ <https://energy-community.org/news/Energy-Community-News/2018/011/21.html>

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developed. The next stage of this process will be the formalization of cooperation between the Ukrainian authorities, the EBRD and the Secretariat in this project.

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

In November, the Ministry of Energy and Coal Industry held a preparatory meeting⁵¹ for training on reacting and interacting of natural gas market players in crisis situations, which was scheduled for December 5. The representatives of the Ministry of Energy and Coal Industry, other authorities and state administrations, the Joint Research Center (JRC) of the European Commission, the Energy Community Secretariat, Ukrenergo, and gas market players participated in the preparation. As stated in the accompanying presentation, amendments to the Security of Supply Rules and the National Action Plan developed with the support of JRC will be submitted to the Ministry of Justice for state registration in the near future⁵².

On November 29, the Council of Ministers of the Energy Community approved the list of projects of common interest of the Community⁵³, including the Ukraine-Poland gas interconnector, and provided recommendations for projects of common interest between countries of the Community and the EU⁵⁴, in particular ensuring a two-way gas flow at the interconnection points of Ukraine and Moldova within the framework of the Transbalkan Corridor project. In addition, a separate decision revealed the fact of violation by Ukraine of the Treaty establishing the Energy Community in the implementation of Regulation (EU) No. 347/2013 on the guiding principles of the Trans-European Energy Infrastructure⁵⁵.

In the resolution following the results of the 9th meeting of the Ukraine-Poland-Lithuania interparliamentary assembly in Vilnius⁵⁶, the participants supported the efforts to create and develop the East-European energy hub, by combining the critical infrastructure of the member countries (electricity transmission networks, gas pipelines, gas storage facilities, railways and automotive networks) of the parliamentary assembly, as well as infrastructure of the border regions between Poland and Ukraine. At the joint press conference, which was held at the end of the assembly, the Chairman of the VRU A.Parubii noted that the creation of the Eastern European energy hub will enable Ukraine, Lithuania and Poland to be energetically independent of the Russian Federation.

According to the operational data of Ukrtransgaz⁵⁷, in connection with the start of gas withdrawal within the heating season, the volumes of gas in Ukrainian UGSFs decreased and, as of November 28, they amounted to 16.3 bcm. At the same time, according to the press release of Naftogaz⁵⁸, the arrears of counterparties receiving Naftogaz gas on preferential terms (in accordance with the Regulation on PSO), on December 4, 2018, amounted to UAH 43.4 billion (during the last week, the gross debt decreased by UAH 2.66 billion, or 5.8%).

Ukrtransgaz published the results of the work of the Ukrainian GTS for 11 months of the current year. From the beginning of 2018, gas transit volumes through Ukraine from the RF to the EU and Moldova amounted to 79.2 bcm. Thus, in comparison with 2017, during January-November 2018, transit decreased by 6.3 bcm or by 7.4%⁵⁹. Imports of gas from European countries also decreased, compared with the same period in 2017 – by 22.9% and amounted to 10.1 bcm. 6.2 bcm of gas, which is 33% less than last year, was came to

⁵¹ http://mpe.kmu.gov.ua/minugol/control/uk/publish/article?art_id=245319220&cat_id=35109

⁵² <http://mpe.kmu.gov.ua/minugol/doccatalog/document?id=245319056>

⁵³ https://energy-community.org/dam/jcr:d9dc16f7-ca43-439e-9b74-c685835584f5/Decision_2018_11_MC-EnC_list_projects_112018.pdf

⁵⁴ https://energy-community.org/dam/jcr:5c4a96a7-2b28-4325-baec-b0dd1ab8e31b/REC_2018_01_MC-EnC_projects_112018.pdf

⁵⁵ https://energy-community.org/dam/jcr:ecc5bf1a-07f0-47ea-8742-e26cb21f2800/Decision_2018_09_MC-EnC_CaseECS4-18_112018.pdf

⁵⁶ <https://www.ukrinform.ua/rubric-economy/2578865-energohab-litvi-polsi-j-ukraini-zabezpecit-nezaleznist-vid-rosii-parubij.html>

⁵⁷ <http://utg.ua/live>

⁵⁸ <http://www.naftogaz.com/www/3/nakweb.nsf/0/0F36FB1A5C6FC294C225835A0049940A?OpenDocument&year=2018&month=11&nt=%D0%9D%D0%BE%D0%B2%D0%B8%D0%BD%D0%B8&>

⁵⁹ <http://utg.ua/utg/media/news/2018/12/rezultaty-roboty-gts-ukrainy-za-sichen-lystopad-2018-roku.html>

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Ukraine by the main gas transit corridor for gas imports from Slovakia. At the same time, imports from Hungary increased by 19%. The volume of own extraction for 11 months of 2018 remained at the level of the last year – 19.1 bcm.

The possible date of the next tripartite consultation between Russia, Ukraine and the European Commission on the future agreement on the transit of Russian gas by the Ukrainian GTS has been postponed from December to the second half of January 2019. The Russian Minister of Energy A.Novak⁶⁰ reported this, noting that the date of the meeting changed, at the request of the European Commission (expressed by M.Šefčovič). A.Novak also reminded this will be another meeting of the group of experts.

Against this backdrop, Naftogaz has in turn set off USD 3.8 million of overpayment to Gazprom for gas transit in the account of the repayment of a fine accrued on Gazprom's obligations under the Stockholm arbitration awards⁶¹. In addition – despite previous statements regarding confidentiality – Naftogaz has published the originals of final arbitration decisions on gas supply and transit contracts⁶², “hiding” information that has been restricted.

⁶⁰ <https://interfax.com.ua/news/economic/551260.html>

⁶¹ <http://www.naftogaz.com/www/3/nakweb.nsf/0/81821601639FAD02C225834E00483161?OpenDocument&year=2018&month=11&nt=%D0%9D%D0%BE%D0%B2%D0%B8%D0%BD%D0%B8&>

⁶² <http://www.naftogaz.com/www/3/nakweb.nsf/0/7E5364806D6A2069C225835400378242?OpenDocument&year=2018&month=11&nt=%D0%9D%D0%BE%D0%B2%D0%B8%D0%BD%D0%B8&>

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Amendments to the Law of Ukraine On the Electricity Market related to the start of work of the retail market, supplier of last resort, and provider of universal services. Within the framework of the phase of preparation for the new electricity market, the NEURC focused on issuing licenses to distribution system operators and cancelling licenses for electricity supply owned by the oblenergos.

The Antimonopoly Committee holds discussions of the draft CMU Resolution On Approval of Criteria for Assessing the Admissibility of State Aid to Entities in the Coal Industry. In accordance with the Law on the State Aid to Business Entities, the state aid recognized as unacceptable should be returned to the state aid provider.

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

On November 23, the VRU adopted the Draft Law on Amendments to the Tax Code of Ukraine and some other legislative acts of Ukraine on improving the administration and revision of the rates of certain taxes and fees, which it amended the Law of Ukraine On the Electricity Market⁶³. In fact, the law included the provisions of the draft law No. 9223 regarding the provider of “universal services”, the provider of the last resort, the start of work of the retail market not from December 11, but from January 1, 2019. Now the CMU may, without holding a tender, determine the state-owned electricity supplier(s), which, from January 1, 2019, for the period prior to January 1, 2021, to temporarily assign the functions of the supplier of the “last hope” to it.

Regulation 714/2009/EC of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation 1228/2003 (Art. 270, Chapter 11, Section IV of the EU-Ukraine Association Agreement)

On November 20, the NEURC adopted Resolution No. 1476 On the Provision/Receipt of Emergency Aid. The regulation regulates the relations regarding the conclusion of contracts of SE NPC Ukrenergo with the TSO to/from the energy systems of neighboring countries on the provision/receipt of emergency aid. The emergency aid is provided in the event of a threat of emergencies and other cases, in which the normal operation of the grid asking for aid is in jeopardy. The contract determines the price and magnitude of the power of emergency mutual aid, and the supply of electricity during the provision of emergency aid is carried out on an hourly basis in MW in accordance with the agreed timetable. During each hour, the power of emergency aid remains unchanged⁶⁴.

Directive 2009/72/EC of 13 July 2009 on 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)

Electricity distribution and supply. TSO and DSOs.

In SE NPC Ukrenergo, by the order of the Ministry of Energy and Coal Industry No. 520 of 19.10.2018, members of the supervisory board were approved⁶⁵. It includes 3 representatives from the state: Serhii Kushnir – Deputy State Secretary of the Cabinet of Ministers of Ukraine, Oleksandr Poplavskiy – Advisor to the Vice Prime Minister of Ukraine, and Maxim Nemchynov – State Secretary of the Ministry of Energy and Coal Industry of Ukraine. Another 4 persons are independent members of the supervisory board, namely: Sevki Acuner – the former director of the EBRD in Ukraine; Peder Østermark Andreasen is the President and CEO of the Danish Energinet transmission system operator (Denmark), Olivier Appert –

⁶³ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=64888

⁶⁴ <http://www.nerc.gov.ua/index.php?id=36547>

⁶⁵ http://mpe.kmu.gov.ua/minugol/control/uk/publish/article?art_id=245316002&cat_id=35109

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Executive Director of the Technology Academy (France) and Luigi De Francisci – co-founder and CEO of DFC Economics (Italy).

The first meeting of the Supervisory Board of SE SPC Ukrenergo was held on November 2-3, all members of the Supervisory Board signed the relevant contracts with SE NPC Ukrenergo⁶⁶. The formation of the Supervisory Board is an important step in the way of corporatization of NPC Ukrenergo and obtaining the status of TSO by it.

On November 15, SE NPC Ukrenergo and SE Moldelektrika agreed and signed the final annexes to the Operational Agreement on Parallel Work in the joint control block Ukraine – Republic of Moldova. The annexes consist of the following documents:

- Regulation on Determination of External Elements and Calculation of N-1 Safety Criteria;
- Regulation on Planning the Operation Modes of the UES of Ukraine and the EU of Moldova;
- Procedure for the Exchange of Data of Remote Measuring and Remote Signaling for Information Exchange between SE NPC Ukrenergo and SE Moldelektrika;
- Technical parameters of the data exchange process using the ICSR protocol;
- Procedure of coordination and distribution of available throughput capacity of the interstate section Ukraine - Moldova⁶⁷.

Signing of these documents means the completion of the preparation of the Operational Agreement on the establishment of a regulatory unit within the power grids of Ukraine and the Republic of Moldova.

On November 7, the NEURC issued the draft Resolution On Approval of the Temporary Procedure for Determining the Amount of Purchase of Electricity in the Wholesale Electricity Market by Suppliers and Distribution System Operator for the Transition Period before the Date of Commencement of the New Electricity Market⁶⁸. According to the Temporary Procedure, before the introduction of a full-scale competitive electricity market, the DSO should purchase electricity in the WEM to cover all costs associated with the transport of electricity to the point of distribution (transmission).

Before the launch of a full-scale market, there is no procedure for the formation of hourly, daily and monthly amount of purchase of electricity in the WEM, and the procedure for suppliers for the purchase of electricity for the needs of their consumers and/or for their own needs, therefore such Temporary Procedure is necessary. It establishes requirements for the procedures for the preparation and transmission of commercial accounting data necessary for conducting calculations in the WEM of Ukraine during the transition period.

On November 8, the NEURC issued recommendations to consumers regarding the procedure for purchasing electricity in 2019⁶⁹.

The Regulator started issuing new licenses for the right to conduct electricity distribution activities both by the former oblenergo (regional energy company) and other owners of distribution networks. Licenses will come into force on January 1, 2019. From the same date, the licenses for the right to conduct economic activities for the electricity transmission by local electric networks and the license for the right to conduct economic activities for the supply of electricity at the regulated tariff expire. Consumers conclude contracts for the purchase of electricity distribution services and the purchase of electricity (goods). The primary agreement is a distribution agreement and, only if it is available, an agreement on electricity supply may be concluded. Small non-household and household consumers shall have the right to supply electricity on the basis of universal service. Sale of electricity to other customers should be carried out at free (market) prices.

On November 23, the NEURC published draft tariffs for electricity distribution services and tariffs for

⁶⁶ <https://ua.energy/osnovni-podiyi/naglyadova-rada-ukrenergo-v-diyi/>

⁶⁷ <https://ua.energy/osnovni-podiyi/ukrenergo-ta-moldelektryka-pidpyshut-ugodu-pro-paralelnu-robotu-u-spilnomu-blotsi-regulyuvannya-u-grudni/>

⁶⁸ <http://www.nerc.gov.ua/?news=8233>

⁶⁹ <http://www.nerc.gov.ua/?news=8244>

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universal service providers, which is a key condition for the successful separation of electricity supply activities from electricity distribution activities⁷⁰. In October, the Regulator adopted the Procedure for the Determining (Formation) of Tariffs for Electricity Distribution Services (by Resolution No. 1175 of 05.10.2018, and the Methodology for Calculating the Tariff for Services of the Universal Service Provider, approved by the resolution of 05.10.2018 No. 1176, according to which the calculation was made.

On November 27, the NEURC decided to reduce the tariff for 2018 for Ukrenergo as TSO by UAH 215,172 million to 3.45 kop./kWh⁷¹. In 2017, this amount was received by SE NPC Ukrenergo as a result of savings on purchases. On September 4 of this year, Ukrenergo received a permission from the NEURC to use the saved funds under the obligation to provide a package of necessary documents regarding changes to the investment program by October 1, 2018. In the opinion of the Regulator, the SE NPC Ukrenergo did not comply with the procedure for approving the investment program, although it provided documents on coordination.

Consumer rights protection

The NEURC published the draft Resolution On Approval of the Procedure for Settlement of Disputes between Business Entities Operating in the Fields of Energy and Utilities for the second time⁷².

After the first disclosure and receipt of comments, the Regulator amended the draft NEURC Resolution On Approval of Rules for Settlement of Disputes between Business Entities Operating in the Fields of Energy and Communal Services and therefore the new draft needs to be re-published and discussed.

On November 19, the NEURC published the draft NEURC Resolution On Approval of Forms of the NEURC Reporting for Electricity Market Participants and Instructions for Their Filing in⁷³.

Directive 2009/72/EC of 13 July 2009 on common rules for the internal market in electricity and repealing Directive 2003/54/EC (Art. 305, Chapter 14, Section IV of the EU-Ukraine Association Agreement)

In accordance with the provisions of the NEURC Regulation of June 19, 2018, No. 459 On Approval of the Procedure for Collecting and Transferring Data on the Operation of the Electricity Market for Publication on the ENTSO-E Transparency Platform, the functions of the Local Authority for the Issue of Energy Identification (EIC codes) ENTSO-E were transferred from SE Energorynok to SE NPC Ukrenergo and the procedure of issue of energy identification codes (EIC codes) on the basis of the Enterprise was organized⁷⁴.

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

On November 8-9, 2018, the Antimonopoly Committee of Ukraine held a training course on the State Aid System in Ukraine for central executive authorities and local authorities, at which, among other things, the criteria for state aid for the coal industry were discussed⁷⁵. The event was preceded by the publication on October 25 of the draft CMU Resolution On Approval of Criteria for Assessing the Validity of State Aid to Business Entities in the Coal Industry.

The draft act provides for the introduction of legal regulation of relations between the Antimonopoly Committee of Ukraine (as the authorized state aid authority), providers and recipients of state aid for the

⁷⁰ <http://www.nerc.gov.ua/index.php?id=35079>

⁷¹ <http://www.nerc.gov.ua/?news=8066>

⁷² <http://www.nerc.gov.ua/index.php?id=35613>

⁷³ <http://www.nerc.gov.ua/?news=8101>

⁷⁴ <https://ua.energy/osnovni-podiyi/ukrenergo-peredano-funktsiyi-mistsevogo-organu-vydachi-energetychnyh-kodiv-identyfikatsiyi/>

⁷⁵ <http://auc.org.ua/novyna/prezentaciyni-materialy-pro-derzhavnu-dopomogu-subyektam-gospodaryvannya>

⁷⁶ http://auc.org.ua/sites/default/files/sectors/u-139/module_4_en-ua_0.pdf

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closure of production coal mining enterprises or production units, covering exceptional costs, ensuring access to coal reserves, initial investment, coverage of current production costs.

In accordance with the above Procedure, the state aid in the coal industry may be recognized as admissible for competition only if it complies with the provisions of the Procedure. The state aid is not given to loss-making and hopeless coalmining enterprises for initial investment and coverage of current production costs, and the total amount of state aid to the coal industry, provided as aid for the closure of mines and aid to cover current production costs, should be reduced annually according to the amounts determined by the Coal Industry Restructuring Program⁷⁷.

In accordance with the Law on State Aid to Business Entities, state aid recognized as unacceptable should be returned to grantors of state aid⁷⁸.

On November 9, the Prime Minister, during the “question hour” in the Verkhovna Rada, announced that it was decided to allocate UAH 500 million to support the mines. The Prime Minister also mentioned work on the launch of the National Coal Company. It should be noted that SE National Coal Company should have been established in accordance with the CMU Resolution 1019-p of 06.12.2017 but still does not function⁷⁹. Previously, it was reported that National Coal Company was created and the articles of association was approved, but a number of problems arose, including problems at the stage of transfer of coalmining enterprises to the newly formed company, since almost all property of state coal enterprises was arrested and in order to be transferred, it is necessary to go through certain procedures.

As a result the Committee hearing held on the topic “The State Sector of the Coal Industry on the Way to ... Strategic Vision and Budget Process” on October 19, an appropriate draft Recommendations were prepared. The draft states, among other things, that today the state sector of the coal industry of Ukraine is in a critical state, both technical, economic and social. The main factor preventing and hindering the development of the industry is the lack of funds for the technical re-equipment of the industry, which does not allow ensuring a look-ahead putting into operation of production capacities as of today. The privatization did not lead to the emergence of a competitive energy coal market, dominant position of the private company DTEK, which creates risks of price pressure and dictation of the terms of supply of coal to the market, is apparent.

The draft also provides for the recommendation to the Verkhovna Rada of Ukraine to adopt the draft Law No. 9049 of 05.09.2018 on amendments to some laws of Ukraine on creating conditions for ensuring state support in the coal industry. The draft Law provides for extending the provisions on the temporary suspension of enforcement proceedings and enforcement measures, as well as on the prohibition of initiating bankruptcy proceedings against state-owned coal companies, in addition to decisions on payment of salary, allowances, other payments (compensations) to the employee in connection with labor relations, etc., and decisions on collection of debts to the funds of compulsory social insurance and the Pension Fund of Ukraine. In the current wording of the relevant provisions, these provisions are valid until January 1, 2019⁸⁰.

The situation with delays in payment of salaries at state coal enterprises continues. As of November 27, indebtedness of state coalmining enterprises to miners, according to operational data of the Ministry of Energy and Coal, amounts to approximately UAH 576 million⁸¹.

Art. 342, Chapter 1, Section V of the EU-Ukraine Association Agreement, Cooperation in the Nuclear Field, Directive No. 96/29/Euratom, Council Directive No. 2006/117/Euratom, Council Directive No. 2003/122/Euratom

⁷⁷ <http://www.drs.gov.ua/wp-content/uploads/2018/11/15178-14.11.18.pdf>

⁷⁸ <http://zakon.rada.gov.ua/rada/show/1555-18>

⁷⁹ <https://www.kmu.gov.ua/ua/news/glava-uryadu-pro-situaciyu-u-vugilnij-galuzi-do-kincya-roku-stabilizuvati-robotu-i-perejti-do-modernizaciyi>

⁸⁰ <http://w1.c1.rada.gov.ua/pls/zweb2/webproc34?id=&pf3511=64552&pf35401=462906>

⁸¹ <http://kvpu.org.ua/uk/news/6/3164-zaborhovanist-z-pochatku-roku-zrosla-na-21-8protsent>

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Rivne NPP successfully underwent a complex inspection by the State Nuclear Regulatory Inspectorate as to compliance with the NRS rules and regulations during the operation of the NPP and the implementation of the Complex (Consolidated) Safety Update Program of Power Units of Ukrainian NPPs⁸².

The Cabinet of Ministers of Ukraine increased expenditures of its own funds by SE NNEGC Energoatom for the implementation of the Complex (Consolidated) Safety Update Program of Power units to UAH 26 billion 893 million (excluding VAT). The relevant resolution on amendments to the section “Amounts and Sources of Financing” of the C(c)SUP has been adopted by the Cabinet of Ministers on November 7, 2018⁸³.

On November 9, the WANO partner inspection was completed at SUNPP. According to its results, the team of leading international experts in the field of nuclear energy named the fields of activity of the nuclear power plant, where efforts should be made to bring them in line with the best world practice, and also identified the strong points of the company, which can be further presented to the world atomic community for studying and using on other sites⁸⁴.

On November 16, at Khmelnytskyi NPP, a meeting was held on extending the lifetime of the first power unit. The project lifetime of the power unit 1 of Khmelnytskyi NPP will expire on December 13, 2018, in November this year, the power unit stops for planned preventive repairs lasting 257 days, during which all necessary measures will be taken – replacement of the equipment that has run its resource with the modern one, that meets the requirements for safe operation of the nuclear power unit, a set of operations for improving safety and reliability, post Fukushima safety measures – all that is included in the Complex (Consolidated) Security Upgrade Program, approved by the Government. Compliance with these conditions is mandatory for obtaining a license for the continued operation of the power unit⁸⁵.

On November 26, 2018, public discussions were held on the implementation of the Complex (Consolidated) Safety Update Program of Power Units of Ukrainian NPPs, the plan for environmental and social measures, and the plan for involving stakeholders of the C(c)SUP. The discussion was attended by specialists of SE NNEGC Energoatom, Zaporizhzhia NPP, a consultant of the C(c)SUP project management group, a representative of PE Atomprojectengineering and the public of the town of Energodar⁸⁶.

During the last week of November, similar discussions took place at SUNPP⁸⁷ and RNPP⁸⁸.

The President of NNEGC Energoatom and the general director of FORATOM European Nuclear Forum held a working meeting to discuss the prospects for cooperation and development of the nuclear industry in the European Union. The meeting was held on November 29 with the participation of representatives of Energoatom and member companies of the UNF Association. The UNF became a member of FORATOM in 2011. At the meeting, FORATOM’s Director General presented a new Concept for the Development of Nuclear Energy of the EU by 2050 and drew attention to the European Commission’s report, which was published on November 28, 2018.

According to the report, in order to meet Europe’s commitment as to low carbon development of the

⁸² <http://www.energoatom.kiev.ua/ua/press/nngc/55017-na-raes-vdbulas-perevrka-dotrimannya-vimog-z-yaderno-ta-radatcyino-bezpeki/>

⁸³ <http://www.energoatom.kiev.ua/ua/press/nngc/55040-kabinet-mnstrv-ukrani-zatverdiv-zblshennya-fnansuvannya-kzpb-vlasnimi-koshtami-energoatoma-do-mlrd-grn/>

⁸⁴ <http://www.energoatom.kiev.ua/ua/press/nngc/55043-na-yuinoukranskyi-atomnyi-stantc-zavershilasya-partnerska-perevrka-vao-aes/>

⁸⁵ <http://www.energoatom.kiev.ua/ua/press/nngc/55062-na-hmelnytskyi-aes-vdbulasya-narada-z-pitan-prodovjennya-termnu-ekspluatatsi-pershogo-energobloka/>

⁸⁶ <http://www.energoatom.kiev.ua/ua/press/nngc/55101-na-zaporozkyi-aes-vdbulasya-chergov-publchn-obgovorennya-pitan-realzatsi-kzpb-energoblokv-aes-ukrani/>

⁸⁷ <http://www.energoatom.kiev.ua/ua/press/nngc/55105-u-mstsuputniku-yuaes-vdbulosya-publchne-obgovorennya-pitan-realzatsi-kompleksno-programi-pdvischennya-bezpeki-aes-a-takoi-planu-ekologichnih-ta-sotcalnih-zahodv/>

⁸⁸ <http://www.energoatom.kiev.ua/ua/press/nngc/55119-u-mstsuputniku-raes-vdbulasya-publchn-obgovorennya-realzatsi-zahodv-kzpb/>

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energy sector by 2050, the share of nuclear power generation in the energy balance of Europe should be about 25%. At present, the installed capacity of the European NPPs is 120 GW, which is 26% of the total electricity production. “The main priority of activities of the European Nuclear Forum is to resolve issues regarding the prolongation of the nuclear power plant’s life cycle in order to ensure that this indicator is maintained. It should be noted that NNEG Energoatom entered the top five ENERGY INTELLIGENCE GROUP rating “Best Green Power Generation: Carbon-Free Generation Capacity”. The rating, which includes the 20 largest energy generating companies in the world, was prepared by Energy Intelligence Group⁸⁹.

The draft Law of Ukraine No. 9039 On Amendments to the Law of Ukraine On the Use of Nuclear Energy and Radiation Safety with regard to the General Designer of the nuclear facility and facility for radioactive waste management is still not considered. At the moment, the draft law is being reviewed at the Committee on Fuel and Energy, Nuclear Policy and Nuclear Safety. The hearing was scheduled at the meeting of the Committee twice during November, but was delayed twice through the lack of a quorum. The purpose of the draft law is to regulate the project activities in the nuclear field, to ensure designing exclusively by project organizations competent in the nuclear energy sector, that have the necessary human and logistical resources, design experience, are residents of Ukraine and will ensure the implementation of copyright support, preservation and support in the current state of a complete set of design documentation for the nuclear facility and facility intended for radioactive waste management and continuity in the event of any structural changes in design organizations in the nuclear industry^{90, 91}.

Art. 342, Chapter 1, Section V of the EU-Ukraine Association Agreement, Cooperation in the Nuclear Field. Cooperation is aimed at solving the problems that arose as a result of the Chernobyl disaster, as well as the decommissioning of the Chernobyl NPP

On November 13, the SAEZM press service reported that Ukrainian experts, together with the IAEA’s expert mission, are developing recommendations for improving the legal terminology in the field of radioactive waste management. Ukrainian terminology in the field of radioactive waste management has been legally established predominantly in the 1990s and is currently not in line with international standards.

The working group consisting of experts from the IAEA, SAEZM, SE NNEG Energoatom, SSE ChNPP and enterprises of SC UkrDU Radon have studied in detail the basic documents that determine the process of radioactive waste management at the legislative level. As a result, they identified a number of problematic issues that require an early adjustment in view of the prospect of the emergence of a large amount of RW from decommissioning of NPP power units to dismantling of equipment 1-3 of the ChNPP power units. According to experts, the timely improvement of Ukrainian legislation will allow avoiding delays during these large-scale works. The basis for the development of expert recommendations is the IAEA Safety Guide (GSR Part 3), the IAEA Glossary 2016, and other IAEA documents (GSR Part 5, GSR Part 6 and SSR-5), which are universally accepted international examples of terminology in the field of radioactive waste management⁹².

According to the SAEZM press service of November 15, Ukrainian specialists in the field of radioactive waste management and IAEA experts are developing recommendations on practical aspects of the improvement of classification for radioactive waste disposal. In April this year, the Verkhovna Rada adopted at first reading the draft law that should change the national classification of radioactive waste in accordance with international standards. With the adoption of this law, it is necessary to amend both the regulatory documents and by-laws of Ukraine concerning the radioactive waste disposal. The IAEA

⁸⁹ http://www.energoatom.kiev.ua/ua/press/nngc/55092-revitying_energy_intelligence_group_energoatom_v_pershyy_pyatrtc_nayibshih_zelenih_energokompanyi_svtu/

⁹⁰ <http://kompek.rada.gov.ua/documents/zasid/73669.html>

⁹¹ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=64535

⁹² <http://dazv.gov.ua/novini-ta-media/vsi-novyny/magate-rozrobit-dlya-ukrajini-rekomendatsiji-shchodo-udoskonalennya-terminologiji-shcho-zastosovuetsya-v-ukrajinskomu-zakonodavstvi-u-sferi-povodzhennya-z-radioaktivnimi-vidkhodami.html>

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experts' participation in the analysis of documents and the development of recommendations for their improvement makes it possible to involve the existing international experience in the implementation of GSR Part 5, GSG-1 and SSR-5 documents in the regulatory framework. Thus, the Ukrainian system of radioactive waste management is guaranteed to comply with world standards⁹³.

On November 29, 2018, the project of the international technical assistance of the European Union "Support on the Radioactive Waste Management at Vektor Industrial Complex in Ukraine" was completed. The beneficiary of this project aimed at strengthening the safety of all radioactive waste (RW) was the State Agency of Ukraine for the Management of the Exclusion Zone. The result of the project implementation was terms of reference for the design of the Solid RAW Processing Technology Corps, a report on the safety analysis of the facility, an environmental impact assessment report, and a report on compliance with the sanitary requirements of Ukraine. In addition, experts prepared recommendations and justification for selecting criteria for the acceptance of waste for disposal in SOPSTRV and TPV-1 and TPV-2 storage facilities based on a reassessment of their safety, taking into account findings of the State Nuclear Regulatory Inspectorate. These steps will increase the safety and cost-effectiveness of the management of radioactive waste in Ukraine in order to achieve the long-term goal of the final and safe disposal of radioactive waste⁹⁴.

⁹³ <http://dazv.gov.ua/novini-ta-media/vsi-novyny/magate-dopomogae-ukrajini-udoskonalyuvati-sistemu-povodzhennya-z-radioaktivnimi-vidkhodami.html>

⁹⁴ <http://dazv.gov.ua/novini-ta-media/vsi-novyny/dazv-z-dopomogoyu-es-prodovzhue-udoskonalyuvati-ukrajinsku-sistemu-povodzhennya-z-radioaktivnimi-vidkhodami.html>

Energy Efficiency and Social Issues

In November, experts from the Energy Efficiency and Social Issues task force recorded only limited progress in some areas of monitoring. The most significant event in this area was the formation of the quorum of the Supervisory Board of the newly established Energy Efficiency Fund, which allows the organization to accelerate the process of forming the operating bodies, to hire managers and operating personnel. At the same time, the “warm loans” program again received a critically low level of funding in the state budget for 2019 – as in the past year, UAH 400 million. Respectively, one can expect a repetition of the scenario in 2018, when the funds provided ran out before the end of April. The work of the State Agency on Energy Efficiency on the promotion of energy management, energy audits and ESCO contracts remains steadily active, and in the area of energy efficiency in buildings, the first tools for searching and connecting with experts in the certification of buildings and engineering systems, the systematic training of which began earlier this year, appeared. However, the reform of the model of providing housing and utilities to most vulnerable groups of households remains the most sensitive issue, since the new approach proposed by the Ministry of Finance this month has critical deficiencies that do not allow real monetization.

Directive 2012/27/EC on energy efficiency

During November, no progress was recorded in drafting the Law of Ukraine On Energy Efficiency. As before, the document is being considered and finalized by the Ministry of Regional Development of Ukraine, and publishing of the finalized text of the draft law, which will also take into account the comments received from interested central executive authorities, on the website of the Ministry for Regional Development for public discussion.

Energy audits and energy management systems (Article 8)

The fulfillment of the requirements of Article 8 of Directive 2012/27/EC is on principle implemented through the implementation of the Action Plan for the Implementation of Energy Management Systems in Budgetary Institutions, approved by the Cabinet of Ministers No. 732-p on 26.04.2017. Although the narrow subject of regulation of this act, namely exclusively budget institutions and state-owned organizations, does not allow talking about the full implementation of the necessary provisions, at least in terms of implementing this order, it is possible to record certain achievements. According to information received by the experts of the working group in response to a request for information, as of November, the State Agency on Energy Efficiency and Energy Saving continues to develop the procedure for certification of energy management systems in budgetary institutions, the national system of energy monitoring and benchmarking, and also prepares a systematic hub of knowledge on best practices in implementing energy management in budgetary institutions on own web site. According to the Agency, by the end of November, one or another system of energy management and energy monitoring has already been implemented in 97 cities (including 21 Oblast centers), 13 regions, as well as in 10 amalgamated hromadas, and in other 35 amalgamated hromadas – they are being developed and prepared for implementation⁹⁵.

One of the examples of actual work to support local government in November was the implementation of their common intentions of the State Agency on Energy Efficiency and Energy Saving and the Zhytomyr Oblast State Administration, outlined in the relevant Memorandum of 2017. With the help of specialists of the relevant Agency, local authorities of Zhytomyr Oblast have developed the Concept and the Regulation on Energy Management of Regional Subordination Facilities and approved these documents on November 10. It is worth noting that during the year after the signing of the Memorandum in the Zhytomyr Regional State Administration, a department for energy management was created; the changes to the regional energy efficiency program have been developed regarding the financing of organizational measures in this area; the algorithm of construction of the energy monitoring system at the regional facilities is determined; persons responsible for implementation of energy monitoring are provided for. In addition, it is planned to

⁹⁵ <https://www.kmu.gov.ua/ua/events/27-listopada-derzhenergoefektivnosti-ta-asociaciya-otg-zmicnyat-spivpracyu-u-sferi-energoefektivnosti-ta-chistij-energetici>

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connect the first 35 health and education facilities to the energy monitoring system by the end of this year⁹⁶.

Metering (Article 9)

On November 16, the order of the Ministry of Regional Development No. 270 of 12.10.2018 On Approval of the Procedure for Registering a Metering Device, developed to comply with the relevant Law On Commercial Metering of Thermal Energy and Water Supply was registered by the Ministry of Justice⁹⁷. Instead, the draft of another order, which is being agreed for a long time in connection with the sensitivity of the regulation issue, is still in the Ministry and is being prepared for submission to the Ministry of Justice: On Approval of the Methodology of Distribution of Amounts Consumed in the Public Utilities Building among Consumers (united with the draft act on approval of the Methodology for Determining and Calculating Correction Coefficients for the Distribution of the Amount of Heat Energy Consumed between Individual Consumers (in corner apartments (premises), apartments (premises) located on ground and top floors of the building, etc.). Following the adoption of this order, work on the development of regulatory legal acts to implement the relevant law will be completed.

In November, project experts and the public were able to see for the first time precise and detailed data on the level of equipment of buildings with units of commercial metering of public utilities under the new methodology⁹⁸. As of the end of November, the following data were published by the State Agency on Energy Efficiency and Energy Saving.

Equipping residential and non-residential buildings with heat energy commercial metering units

77.5% residential buildings

77.7% non-residential buildings

	Residential buildings	Non-residential buildings
<i>Highest indices</i>	Cherkasy, Mykolaiv, Vinnytsia regions	Mykolaiv region
<i>Lowest indices</i>	Lugansk, Ternopil, Kirovohrad regions	Zhytomyr and Kyiv regions

Equipping residential and non-residential buildings with hot water commercial metering units

21.3% residential buildings

53.1% non-residential buildings

	Residential buildings	Non-residential buildings
<i>Highest indices</i>	Kyiv and Donetsk regions (hot water supply services are not provided in the Zhytomyr, Zakarpattia, Kirovograd, Odesa, Kherson and Chernivtsi regions)	Kyiv, Lviv, Khmelnytskyi, Dnipropetrovsk regions (hot water supply services are not provided in the Zhytomyr, Zakarpattia, Kirovograd, Odesa, Kherson and Chernivtsi regions)
<i>Lowest indices</i>	Other regions	The city of Kyiv, Sumy and Lugansk regions

⁹⁶ <http://sae.gov.ua/uk/news/2655>

⁹⁷ <https://ips.ligazakon.net/document/view/RE32756?an=64>

⁹⁸ <http://sae.gov.ua/uk/content/commercial-accounting>

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Equipping residential and non-residential buildings with drinking water commercial metering units

71,1% residential buildings

93,6% non-residential buildings

	Residential buildings	Non-residential buildings
Highest indices	Mykolaiv, Ivano-Frankivsk and Zakarpattia regions	Dnipropetrovsk, Vinnytsia and Donetsk regions
Lowest indices	Poltava, Zaporizhzhia, Kharkiv, Chernivtsi regions	

Energy service market (Article 18)

During November 2018, the relevant Agency actively implemented the state policy in support of the emergence of the energy service market, including through the provision of professional advisory assistance to other public authorities, primarily the managers of a large number of buildings that require thermo-modernization. Thus, in November, another Memorandum was signed on strengthening cooperation to attract ESCO-investments to increase energy efficiency of facilities subordinated to the Ministry of Internal Affairs (National Police, SES, State Research Institute of the Ministry of Internal Affairs, hostels, military towns and units, as well as medical institutions). According to the results of the signing of the Memorandum, the Ministry of Internal Affairs has already selected 35 facilities that may be of interest to ESCO investors^{99,100}. In addition, the State Statistics Service and SES issued orders for holding ESCO-tenders for 11 buildings of the State Statistics Service, incl. the main building of the service and regional offices; 2 buildings of the SES¹⁰¹. In general, today 150 potential facilities of the SES and 30 potential ESCO facilities of the State Statistics Service have been selected¹⁰².

Among other things, the Agency signed the Memorandum of Cooperation for a wide-ranging implementation of energy efficiency and renewable energy projects in local communities with the Association of Amalgated Hromadas, which has already united about 200 local self-government authorities. Within the framework of the indicated Memorandum, the parties agreed to work on: the development and implementation of local energy efficiency and renewable energy programs; the development and implementation of energy plans for the replacement of traditional types of fuels with alternative ones; the implementation of projects: generation of energy from biomass, biogas, garbage; the construction of bioethanol and biodiesel production facilities; introduction of ESCO projects¹⁰³.

Another thematic example of this work was a thematic seminar on the peculiarities, advantages and prospects of the introduction of the ESCO-mechanism in the budgetary area, conducted by the specialists of the State Agency on Energy Efficiency and Energy Saving with the participation of the Head of the Poltava Oblast Council, members of the Ukrainian Association of Energy Service Companies and amalgated hromadas in Poltava¹⁰⁴. The head of the State Agency on Energy Efficiency and Energy Saving presented the specific features of attracting ESCO-investors to modernize facilities of government agencies at the seminar initiated by the State Agency on Energy Efficiency and Energy Saving and the relevant the UNDP Project¹⁰⁵.

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

During November, a decisive event on the way to the commencement of work of the Energy Efficiency Fund of Ukraine took place: the newly created organization received the quorum of its key governing body

⁹⁹ <http://saee.gov.ua/uk/news/2641>

¹⁰⁰ http://mvs.gov.ua/ua/pages/745_ENERGOFEKTIVNIST.html

¹⁰¹ <http://saee.gov.ua/uk/news/2665>

¹⁰² http://saee.gov.ua/uk/content/energoserwis_1

¹⁰³ <http://saee.gov.ua/uk/news/2683>

¹⁰⁴ <http://saee.gov.ua/uk/news/2654>

¹⁰⁵ <http://saee.gov.ua/uk/news/2676>

Energy Efficiency and Social Issues

– the Supervisory Board. The five-member body was initially supplemented by two independent participants who won in an open and public competition, in which 56 contenders took part. The winners were Andrzej Rikewicz, Vice-President of the National Energy Conservation Agency of Poland, and Yuliya Sabatiuk, chairman of Luchany MBCA¹⁰⁶. In addition, two nominees for the positions of independent members of the Supervisory Board, who will remain in reserve, were identified in the competitive selection procedure; they are Laura Garbenciute-Bakiene from Lithuania and Karina Luchinkina from the UK. Only a few days after the announcement of the results of the competitive selection, on November 29, the Cabinet of Ministers of Ukraine determined the members of the Supervisory Board of the Energy Efficiency Fund, which will represent the Government of Ukraine. In particular, two more members of the Board were appointed: Yurii Heletii, Deputy Minister of Finance of Ukraine, who will coordinate work with public funds and international financial institutions, and Nataliya Khotsianivska, Director of the Department of Life-Support Systems Economy of the Ministry of Regional Development of Ukraine. Thus, as at the end of November, 4 of the 5 members of the Supervisory Board were appointed to their positions, which means that now, without waiting for the appointment of the last member (representing the interests of international financial institutions and the European Union), the Supervisory Board will be able to start its own functions, in particular, to form executive bodies of the Fund and appoint key managers. Such progress in establishing the Fund's bodies gave the Prime Minister V. Groysman grounds to predict the start of his work in the second quarter of 2019¹⁰⁷. Although such terms are possible in general, in order to achieve such a goal, all parties involved in the process will have to significantly accelerate the performance of their functions.

In addition, the relevant Deputy Prime Minister G.Zubko said that the German Government plans to provide additional 10 million euros within the framework of cooperation on the Energy Efficiency Fund, in particular to the projects aimed at converting subsidies into investments in energy efficiency. By the end of the year, signing of the agreement between Ukraine and the EU to channel additional 50 million euros for the Multi-Donor Fund is also expected¹⁰⁸.

After a long-term procedure for coordinating the decision to continue the “warm loans” program, only on November 8, at a meeting of the Verkhovna Rada's Budget Committee, a decision was made by the Government to allocate additional UAH 100 million for the additional financing of this program for MBCAs by the end of 2018¹⁰⁹. Despite the need for significant technical work on the part of MBCAs to execute and file all the documents required to receive these funds so close to the end of the year, by the end of November, almost all of the additional funds were used. In addition, on November 23, the Verkhovna Rada of Ukraine adopted the State Budget for 2019, in which expenditures for the “warm loans” programs is provided similar to the previous two years, in the amount of UAH 400 million¹¹⁰. Despite appeals from the public and representatives of MBCAs, as well as the expert environment, in order to prevent the program from stopping again after two months of its work, it is necessary to increase the amount of funding, the authorities have decided not to increase energy efficiency expenditures within the framework of the program. The relevant Deputy Prime Minister assured that a full-fledged work of the Energy Efficiency Fund, the amount of financing of which exceeds UAH 3 bln, will be started in 2019. However, according to the experts of the working group, the implementation of the “warm loans” program and the start of funding through the Energy Efficiency Fund cannot be considered interchangeable. First, these two instruments of the state policy in the field of energy efficiency have fundamentally different target groups, the amount of financial support and other characteristics. In addition, based on the development of the “warm loans” program, relatively small demand for energy efficiency products can be expected as households and MBCAs will need some time to build trust in a new format of work – through the Fund, while the popularity of the “warm loans” program only increases every year.

¹⁰⁶ <http://www.minregion.gov.ua/press/news/komisiya-viznachila-peremozhtsiv-konkursu-na-posadi-nezalezhnih-chleniv-naglyadovoyi-radi-fondu-ee-zubko/>

¹⁰⁷ <https://www.ukrinform.ua/rubric-economy/2585918-grojsman-fond-energoefektivnosti-zaprachue-u-drugomu-kvartali-nastupnogo-roku.html>

¹⁰⁸ <http://www.minregion.gov.ua/press/news/sformovana-bilshist-skladu-naglyadovoyi-radi-fondu-energoefektivnosti-zubko/>

¹⁰⁹ <http://sae.gov.ua/uk/news/2652>

¹¹⁰ <https://www.kmu.gov.ua/ua/news/byudzhet-2019-prijnyato-400-mln-grn-vidileno-na-tepli-krediti-na-nastupnij-rik>

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

During November, three more orders of the Ministry of Regional Development adopted in pursuance of the Law of Ukraine On the Energy Efficiency of Buildings were registered with the Ministry of Justice in October:

- Order of the Ministry of Regional Development No. 276 of 18.10.2018 On Approval of the Procedure for Independent Monitoring of Energy Certificates, registered with the Ministry of Justice on November 23, 2018 under No. 1323/32775;
- Order of the Ministry of Regional Development No. 275 of October 18, 2018 On Approval of the Procedure for Reviewing the Reports on the Inspection of Engineering Systems, registered with the Ministry of Justice on November 05, 2018 under No. 1266/32718¹¹¹;
- Order of the Ministry of Regional Development No. 274 of October 18, 2018 On Approval of the Procedure for Independent Monitoring of the Reports on the Results of the Inspection of Engineering Systems, registered with the Ministry of Justice on November 09, 2018 under No. 1277/32729¹¹².

In addition, on its website, the State Agency on Energy Efficiency and Energy Saving opened up the database of certified professionals (certified energy auditors for certification of energy efficiency of buildings and experts in the inspection of engineering systems of buildings, as well as design engineers)¹¹³ and the database of energy efficiency certificates for buildings¹¹⁴. The list of higher educational establishments, with which the State Agency for Energy Efficiency and Energy Saving signed voluntary Cooperation Agreements, is also defined¹¹⁵. All this is confirmed by the beginning of the formation of a real market of specialists who will be responsible for large-scale energy audits and certification of buildings in Ukraine, which has traditionally been called one of the bottlenecks in the implementation of the provisions of Directive 2010/31/EC. Although it will take a lot of time for the saturation of this market, it is important to note the first positive results of Ukraine's efforts on this path.

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

The plan for the development of technical regulations for 2018-2019, approved by the Order of the Ministry of Economic Development and Trade of Ukraine No. 196, provides for the development of the last two technical regulations for energy labeling, necessary for Ukraine to fully comply with its obligations under Directive 2010/30/EC (regarding water heaters and room heater) in the last quarter of 2018. Nevertheless, during November, none of these acts were published on the website of the main developer – the State Agency on Energy Efficiency and Energy Saving.

At the same time, during November, some documents appeared on similar subjects appeared on the official website of the State Agency on Energy Efficiency and Energy Saving: the draft technical regulations on eco-design were published:

- regarding ecodesign requirements for fluorescent lamps without integrated ballast, high intensity gas discharge lamps, as well as ballasts and lamps intended for use with such lamps¹¹⁶;
- regarding the establishment of requirements for eco-design for water heaters and hot water storage tanks¹¹⁷.

¹¹¹ <http://zakon.rada.gov.ua/laws/show/z1266-18>

¹¹² <http://zakon.rada.gov.ua/laws/show/z1277-18>

¹¹³ http://saee.gov.ua/sites/default/files/BDF_17_12_18.xlsx

¹¹⁴ http://saee.gov.ua/sites/default/files/Energy_audit_25_10_18.xlsx

¹¹⁵ <http://saee.gov.ua/uk/content/buildings-certification>

¹¹⁶ <http://saee.gov.ua/sites/default/files/reglament%20lyuminestentni.docx>

¹¹⁷ <http://saee.gov.ua/sites/default/files/reglament%20vodonagrivachi.docx>

Energy Efficiency and Social Issues

Social issues

In the first attempt to monetize housing and utility subsidies, in 2018, the Government introduced the so-called first phase of reform, removing clearing settlements and replacing them with monetary ones. However, along with this, the obligation to operate the funds was shifted from the social security and treasury authorities to MBCAs and service providers, which caused a public conflict and actual suspension of the reform for almost a year. Changes to the procedure for granting and receiving such state aid, which were introduced in two waves during the year in April and then in October 2018, did not touch upon the processes of administering the provision of state financial support.

During October, notifications of intention to start the first phase of actual subsidy monetization again from the beginning of January 2019 were again received from representatives of responsible ministries and the Cabinet of Ministers, although it was not possible to study the actual conditions of this process until now. However, on November 21, 2018, the relevant draft resolution of the Cabinet of Ministers of Ukraine entitled Some Issues of Granting Housing Subsidies in the Monetary Form to the Households was published for discussion on the official website of the Ministry of Social Policy of Ukraine¹¹⁸. However, the analysis of this document provides grounds for arguing that the draft resolution provides for imitating monetization and attempts to revert the previous procedure of accrual and write-offs of the amount of the subsidy, with the only difference that the functions of the State Treasury Service and partially of the bodies of social protection of the households will be executed by Oschadbank, while with the fee, the amount of which is not is determined. Such a model does not in fact provide beneficiaries of subsidies with the opportunity to dispose of funds on their so-called “subsidized” account, although this should be the main and principal characteristic of real monetization. Instead, the funds accrued on such personal account will be automatically deducted at the request of service providers on the first-served basis.

At present, representatives of the MBCA community are criticizing the model proposed by the Ministry of Finance. In addition, the need to finalize proposals, according to unofficial information, is announced at Government meetings and by representatives of NJSC Naftogaz of Ukraine.

¹¹⁸ https://www.msp.gov.ua/projects/374/?fbclid=IwAR0Jf31ZYXchu28A_3KjHsMq6FYu602Ooq9RziZAahNckNCOgP7SplxxE2I

Environment and Renewable Energy Sources

In its Report on the Implementation of the Association Agreement, the European Commission noted the progress of environmental reforms¹¹⁹. In particular, Ukraine's first steps in the implementation of the Paris Agreement, introduction of the EIA and SEA, approval of the Waste Management Strategy and progress in approximation to the provisions of the Flood Directive were noted.

Publishing the concept of implementation of state policy in the field of industrial pollution, which laid the foundations for the introduction of an integrated permit for enterprises, as well as approval of the Concept for the Creation of the National Open Environment System was an important achievement.

In turn, in the field of renewable energy, the adoption of the draft law on the implementation of auctions remains the key issue.

Directive 2003/4/EC on public access to environmental information

On November 7, 2018, the Government, by its order No. 825-p, supported the Concept for the Creation of the national Open Environment automated system, which will work in a free access and integrate the environmental data of various central executive authorities and local governments into one electronic database. In particular, it refers to digitizing environmental information, which until now is on paper or scattered across different institutions and departments.

First of all, the provision of administrative services by the Ministry of Environment and Natural Resources and the analysis of environmental registries will be made in an electronic form.

The national Open Environment system will allow Ukraine to integrate with foreign registries, inventories, information resources, in particular, on monitoring the environment and the register of emissions and pollution transfers, as well as to the Joint Environmental Information System of the European Environment Agency for the production, research and evaluation of environmental indicators recommended by the UN.

It is expected that the Open Environment system with digitized environmental data should be launched by 2020.

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

The Ministry of Environment and Natural Resources published the draft CMU Resolution On Approval of the Concept for the Implementation of the State Policy in the Field of Industrial Pollution for public discussion.

The concept points to the system of valid environmental permits as one of the regulatory and institutional reasons for significant pollution of the environment by industrial facilities in Ukraine. The main tasks of the concept: (1) improving the efficiency of state regulation in the field of industrial pollution; (2) strengthening institutional capacity and ensuring the effective interaction of the authorities responsible for issuing environmental permits; (3) improving the system of supervision (control) over the observance of the requirements of environmental legislation by business entities.

Depending on the type of activity and capacities, the Concept provides for the introduction of two types of permits: an integrated permit (Group 1 plants) and a unified permit (Group 2 plants). The integrated permit will be issued by the Ministry of Environment and Natural Resources and will contain requirements for maximum allowable emissions of pollutants into the atmosphere, special water use, discharge of industrial waste water into centralized drainage systems, waste management operations, soil protection, energy efficiency and raw material utilization, emergency operations and preventing them, decommissioning after the expiration of equipment lifetime or early termination of production and recovery of the territory of the industrial site to a safe state, levels of noise impact on the environment, odors and more. Uniform permits will be issued in accordance with sectoral regulatory legal acts that will contain the maximum amount of industrial pollution, monitoring and reporting requirements, etc.

Entities subject to the Concept will be obliged to monitor the volumes of industrial pollution and report to

¹¹⁹ https://cdn2-eeas.fpfis.tech.ec.europa.eu/cdn/farfuture/_15aL4U8X4gBgA58M87CyjAApUdq8Hwcb-O-u9rf6yU/mtime:1510670011/sites/eeas/files/association_implementation_report_on_ukraine.pdf

Environment and Renewable Energy Sources

the Ministry of Environment and Natural Resources on the implementation of the conditions of the integrated permit. Pollution data and reporting results will be made publicly available in the electronic information system.

The concept provides for three stages of the implementation of measures: (1) 2019-2021 (the action plan for the implementation of the concept, the draft law on integrated prevention, reduction and control of industrial pollution, development and maintenance of the register of plants, creation of an electronic information system, development and approval of the required by-law regulatory legal documents, optimization of institutional capacities of the Ministry of Environment and Natural Resources); (2) 2022-2024 (the development and approval by the Ministry of Environment and Natural Resources of the conclusions of the best available management technologies and methods for certain types of activities, analysis and improvement of the regulatory framework in the field of industrial pollution, training for the staff); (3) 2025-2028 (the development and approval of conclusions of the best available management technologies and methods for activities in Annex 1, the improvement of the regulatory framework in the field of industrial analysis, the implementation of training programs for the staff.

It is expected that the implementation of the Concept will reduce industrial pollution, harmonize Ukraine's environmental legislation with EU legislation in the field of industrial pollution, reduce administrative and regulatory burdens, create and strengthen institutional capacity in the field of industrial pollution, create an effective mechanism for controlling industrial pollution and ensuring public access to information and participation in the decision-making process.

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

It is planned that the adoption of the draft law on the introduction of auctions will make the RES market more competitive and attract new investors (especially foreign ones, for which the rules of the auction system have long been known and understandable).

Among the positive changes that will be implemented by this draft law, experts note, in particular, that auctions will be mandatory on electronic platforms, that the qualification conditions for the participants are minimal and that the introduction of a mechanism for guaranteeing competition in the event that the number of applications at the auction is less than the quota volume.

It should be noted that Ukraine also receives recommendations from IRENA experts regarding the introduction of a system of auctions in the field of RES.

In accordance with the Action Plan for the Implementation of the First Stage of the Energy Strategy of Ukraine for the Period up to 2035 "Security, Energy Efficiency and Competitiveness", which provides for the creation of an electronic platform for biofuels trading, the discussion of the e-commerce system, its participants and functions, proposed by the draft laws, also continues.

As for the launch of the green bond market, the implementation of which is also provided for by the Plan, the State Agency on Energy Efficiency and Energy Saving, the Climate Bonds Initiative and UNDP are currently discussing the possibility of launching such a market¹²⁰. The development of the Road Map for the Creation of the Green Bond Market and the preparation of the relevant by-laws should be the next step.

¹²⁰ <http://sae.gov.ua/uk/news/2662>

Oil

In the reporting period, the government adopted a series of decisions aimed at the implementation of Directive 94/22/EC in Ukraine. A new procedure for the use of geological information has been approved. The criteria for assessing the degree of risk during the development of oil fields are set. The sale of special permits for the use of subsoil is organized through the ProZorro.Sales system. Within the fiscal process, the rates and procedures of taxation of certain energy products were revised. In particular, control over the circulation of aviation petroleum and jet fuel has been strengthened. The licensing of business entities in production, storage and trade of fuel is introduced. The royalty for the production of liquid hydrocarbons have been increased by 2%. The excise tax rates for electric cars have been reduced, and operations on their imports to Ukraine are exempted from VAT taxation. Despite these positive news, the threat of non-fulfillment of the plan of the Government's priority actions in the implementation of Directives 99/32/EC, 98/70/EC and 94/63/EC has increased, as evidenced by the annual report of the Energy Community Secretariat¹²¹.

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

As of December 5, 2018, there was no information in open sources on the status of the formulation by the interested authorities of the draft Law On Minimum Reserves of Oil and Oil Products" (task 129 of the plan¹²²), developed by the State Agency of Reserve and approved by the Energy Community, which was sent to the Ministry of Economic Development and Trade of Ukraine on November 12, 2018¹²³.

Meanwhile, on November 28, 2018, the Kyiv City Prosecutor's Office closed the case on possible unlawful actions "in the formation of oil products", within the framework of which the Prosecutor General of Ukraine, Yu.Lutsenko, on October 4, 2018, reported on serving suspicion of causing damage to the state in the amount of UAH 6 million to the head of the State Agency of Reserve V.Mosiichuk¹²⁴. As noted earlier, investigative actions related to this case could have hindered the implementation of Directive 2009/119/EC in Ukraine.

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

In order to comply with the requirements of Directive 2009/28/EC in the area of encouraging the use of energy produced from renewable sources, transactions related to import of vehicles exclusively equipped with electric motors into the customs territory of Ukraine are exempted from value added tax by January 1, 2023. The relevant changes were made on November 23, 2018 by the draft law (registration number 9260¹²⁵)¹²⁶. By the same law of November 25, 2018, the following excise duty rates were set:

- for electric passenger cars equipped exclusively with electric motors (one or more), – EUR 1 per kilowatt hour of electric battery capacity (it was EUR 109,129 per item)
- for hybrid passenger cars – EUR 100 per item (it was EUR 109,129 per item)¹²⁷.

Directive 2003/96/EC on restructuring the Community framework for the taxation of energy products and electricity (Annex XXVIII, Article 353 of the AA)

On November 23, 2018, the Verkhovna Rada adopted the draft law amending the Tax Code of Ukraine and some other legislative acts of Ukraine on improving the administration and revision of rates of certain taxes and fees (registration number 9260¹²⁸)¹²⁹. According to it, from July 1, 2019, licensing of business entities

¹²¹ https://www.energy-community.org/dam/jcr:05c644e0-3909-4c26-84f5-e1cdb63e1af4/ECS_IR2018.pdf

¹²² <http://zakon5.rada.gov.ua/laws/show/497-2018-%D1%80>

¹²³ <https://rezerv.gov.ua/novini-mznn/zakonoproekt-pro-stvorennya-ta-zberigannya-minimalnih-zapasi>

¹²⁴ <https://www.facebook.com/photo.php?fbid=1042483895950785&set=a.139021569630360&type=3>

¹²⁵ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=64888

¹²⁶ As of December 5, 2018, the approved law was being prepared for signature

¹²⁷ <http://zakon.rada.gov.ua/laws/show/2611-19>

¹²⁸ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=64888

Oil

that produce and/or store fuel, carry out wholesale and/or retail trade will be introduced. Licensing will be carried out according to a simplified procedure. Licensing conditions must be determined by the Cabinet of Ministers. The annual license fee will be:

- for the right to store fuel – UAH 780;
- for wholesale trade, if the licensee has places of wholesale trade in fuel (oil depots) – UAH 5,000, in the absence of such places – UAH 10,000;
- for retail trade – UAH 2,000 for each petrol or gas-filling station.

Import or export of fuel is carried out in the presence of the business entity importing or exporting fuel, licenses for the right of production or storage, or wholesale or retail fuel trade. Licenses will be issued for five years, by executive authorities authorized by the Cabinet of Ministers of Ukraine. A fine will be charged for the circulation of fuel without a license. In addition, market participants expressed their concerns about the lack of clear understanding by the Government of the licensing mechanism being introduced¹³⁰.

The same regulatory act introduced control over the circulation of aviation gasoline and fuel for jet engines from July 1, 2019. The fact of their intended use must be confirmed by providing the holder of the bill with copies of the original documents confirming the sale of such fuel to the Armed Forces of Ukraine or the State Agency of Reserve on the basis of tenders licensed to operators of refueling of aircrafts or companies that provide fuel under certificates issued by the competent authority on civil aviation matters. In the absence of such documents, from October 1, 2019, the excise tax rate increased by 10 times will be applied to the fuel.

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

As of December 5, 2018, in open sources, there was no information on the state of development by the Ministry of Energy and Coal Industry of:

- unified legal, organizational, financial and economic principles of “the implementation of quality control of oil products in accordance with EU norms and rules” (task 1702 of the plan¹³¹);
- systems for monitoring the quality and safety of oil products; interlaboratory comparisons of test results to confirm their quality; collection of in-country data on the quality of motor fuel (tasks 1703.1, 2 and 3 of the plan¹³²).

At the same time, March 20, 2018 was determined as the deadline for these tasks.

Directive 99/32/EC¹³³ relating to a reduction in the sulfur of certain liquid fuels and amending Directive 93/12/EC, as amended by Regulation (EC) 1882/2003 and Directive 2005/33/EC

As of December 5, 2018, there was no information available in open sources on the status of preparation of the following draft Government resolutions by responsible officers:

- on approval of the Technical Regulation on Requirements for Aviation Petroleum and Jet Fuels (the work on which was scheduled to be completed by January 1, 2018, task 32¹³⁴), introduced into the plan¹³⁵ (paragraph 6 of Annex 2; deadline for implementation – December 2018);

¹²⁹ As of December 5, 2018, the approved law was being prepared for signature

¹³⁰ http://enkorr.com.ua/a/news/Rada_prinyala_izmeneniya_v_Nalogoviy_kodeks_aktsiznie_skladi_litsenzirovanie_i_aviakerosin_OBNOVLYaETSYa/234736

¹³¹ <https://www.kmu.gov.ua/ua/npas/pro-vikonannya-ugodi-pro-asociaciyu-mizh-ukrayinoyu-z-odniyeyi-storoni-ta-yevropejskim-soyuzom-yevropejskim-spivtovaristvom-z-atomnoyi-energiyi-i-yihnimi-derzhavami-chlenami-z-inshoyi-storoni>

¹³² <https://www.kmu.gov.ua/ua/npas/pro-vikonannya-ugodi-pro-asociaciyu-mizh-ukrayinoyu-z-odniyeyi-storoni-ta-yevropejskim-soyuzom-yevropejskim-spivtovaristvom-z-atomnoyi-energiyi-i-yihnimi-derzhavami-chlenami-z-inshoyi-storoni>

¹³³ Directive 99/32/EC (other designation – 1999/32/EC) was codified on May 11, 2016 (Directive 2016/802/EC).

¹³⁴ <http://www.me.gov.ua/Documents/Download?id=d8571d0b-53a6-4ade-88c1-75579be0cb39>

Oil

- on amendments¹³⁶ to the Technical Regulations concerning requirements for automotive petroleum, diesel, marine and boiler fuels¹³⁷ in order to bring it into line with the requirements of Directives 98/70/EC and 2016/802/EC (task 1702.4 of the action plan¹³⁸).

According to the information of the participants of the interdepartmental working group, created on March 12, 2018, by the order of the Ministry of Energy and Coal Industry No. 159¹³⁹, approval of the Technical Regulation on Requirements for the Liquefied Petroleum Gas, which had to take place by November 1, 2018, was postponed indefinitely. In this regard, the Ukrainian LPG Association initiated an extension till January 1, 2020 of the term of GOST 27587-87 "Hydrocarbon Liquefied Gases for Road Transport. Specifications"¹⁴⁰.

Appendix 2 to the National Standardization Work Program for 2018¹⁴¹ provides for the adoption of 53 standards required to harmonize the requirements for the quality and safety of hydrocarbon fuels in Ukraine and the EU by the end of the year. However, as of December 5, 2018, the final wording only for one of the standards planned for adoption in 2018 has been developed, for five – the first ones, 13 drafts were returned for finalization, work on 34 standards has not been started.

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

As of December 5, 2018, there is no information available in open sources on the status of the fulfillment of the task 1695 of the plan¹⁴², by which the Ministry of Regional Development has been commissioned until October 31, 2018:

- to develop a draft technical regulation that establishes requirements for fuel storage, transportation and reloading, appropriate equipment and service stations;
- to conduct an inventory of "terminals for storage and loading of gasoline";
- to develop recommendations for the control of the operation of petrol stations and "small oil products storage tanks".

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

On October 31, 2018, the Government adopted Resolution No. 913 On Approval of the Criteria for Assessing the Risk of Economic Activities in the Field of Geological Study and Rational Use of Subsoil and Determining the Periodicity of Implementation of Planned Measures of State Supervision (Control) by the State Service of Geology and Mineral Resources"¹⁴³. The purpose of the adoption of this document is to focus the attention of the government oversight authority on the most risky business entities. As it is stated, "the implementation of the act will allow the State Service of Geology and Mineral Resources to organize the implementation of state supervision (control) at an appropriate level, to ensure unambiguousness and transparency in relations between business entities and the state supervision (control) authority, to ensure the organization of planned state supervision (control) of observance of

¹³⁵ <http://mpe.kmu.gov.ua/minugol/doccatalog/document?id=245282918>

¹³⁶ <http://www.drs.gov.ua/wp-content/uploads/2018/05/6795-10.05.18.pdf>

¹³⁷ <http://zakon.rada.gov.ua/go/927-2013-n>

¹³⁸ <https://www.kmu.gov.ua/ua/npas/pro-vikonannya-ugodi-pro-asociaciyu-mizh-ukrayinoyu-z-odniyeyi-storoni-ta-yevropejskim-soyuzom-yevropejskim-spivtovaristvom-z-atomnoyi-energiyi-i-yihnimi-derzhavami-chlenami-z-inshoyi-storoni>

¹³⁹ http://www.mev.gov.ua/sites/default/files/docfiles/nakaz_no_159_vid_12.03.2018.pdf

¹⁴⁰ <http://www.nefterynok.info/uk/novini/uasg-prosit-mnenergo-prodovjiti-stariy-gost-na-skrapleniy-gaz-do-2020-roku->

¹⁴¹ <http://uas.org.ua/ua/messages/dodatok-2-do-programi-robot-z-natsionalnoyi-standartizatsiyi-na-2018-rik/>

¹⁴² <https://www.kmu.gov.ua/ua/npas/pro-vikonannya-ugodi-pro-asociaciyu-mizh-ukrayinoyu-z-odniyeyi-storoni-ta-yevropejskim-soyuzom-yevropejskim-spivtovaristvom-z-atomnoyi-energiyi-i-yihnimi-derzhavami-chlenami-z-inshoyi-storoni>

¹⁴³ <http://zakon.rada.gov.ua/laws/show/913-2018-%D0%BF>

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requirements of legislation in the field of geological study and rational use of subsoil, will contribute to preventing violations of legislation¹⁴⁴.

According to the approved document, criteria for assessing the degree of risk during geological exploration and extraction of hydrocarbons, the type of use of mineral resources, the type of minerals, the useful life of the deposit, the depth of wells and the existence of violations of the legislation, identified during the last scheduled inspection. In the absence of violations, the activities of business entities engaged in geological exploration and extraction of oil and gas condensate will be of medium and high risk. Planned measures of state supervision (control) over the activities of such entities will be carried out by the State Service of Geology and Mineral Resources at intervals of no more than once every two to three years.

On November 29, 2018, the Ministry of Environment and Natural Resources sent the draft Government Resolution “Issue of Determining the Price of a Special Permit for the Use of Subsoil”¹⁴⁵, which provides for amendments to the Methodology for Determining the Initial Sale Price at the Auction for the Special Permit for Use of Subsoil¹⁴⁶ (the work plan of the Ministry of Environment and Natural Resources¹⁴⁷, section 1, task 1, priorities of the Government, task 189 of the plan¹⁴⁸, deadline – November 2018). The relevant changes provide for setting the initial price of a special permit under the customs value of oil and/or gas condensate, provided by the State Fiscal Service, and volumes of their stocks (resources) determined by the results of geological and economic assessments.

It should be noted that, despite the adoption, on October 17, 2018, of the Government Decree No. 848 On the Implementation of the Experimental Project on the Implementation of Auctions for the Sale of Special Permits for the Use of the Subsoil Using Electronic Auctions¹⁴⁹ (the work plan of the Ministry of Environment and Natural Resources¹⁵⁰; section 1, task 3, Government priorities; deadline – August 2018), work on a number of documents of the so-called “Roadmap for Conducting International Oil and Gas Auctions”¹⁵¹, the approval of which was reported on July 26¹⁵², has not yet been completed.

In particular, the state of development of the draft Government Resolution On Amendments to the Methodology for Determining the Value of Reserves and Resources of Mineral Resources of the Deposit or Subsoil Plot Provided for Use¹⁵³ (the deadline for implementation is postponed to October¹⁵⁴ and December 2018^{155, 156}), published by the State Service of Geology and Mineral Resources on July 9, 2018, rejected by the State Regulatory Service (decision No. 202 of May 7, 2018¹⁵⁷) through the failure of developers to comply with the key principles of regulatory policy and submitted again on July 17, 2018¹⁵⁸.

The following issues remain unresolved:

- abolition of mining allotment for the oil and gas producing industry: on October 11, 2018, the State Regulatory Service adopted the decision No. 433¹⁵⁹, which for the second time rejected the draft Government Resolution on Amendments to the Regulation on the Procedure for the Providing Mining Allotments, submitted by the Ministry of Social Policy¹⁶⁰ (the deadline for implementation is the first quarter of 2017¹⁶¹);

¹⁴⁴ <https://www.kmu.gov.ua/ua/npas/pro-zatverdzhennya-kriteriyiv-za-yakimi-ocinyuyetsya-321>

¹⁴⁵ <http://www.drs.gov.ua/wp-content/uploads/2018/12/15900-04.12.2018.pdf>

¹⁴⁶ <http://zakon0.rada.gov.ua/laws/show/1374-2004-%D0%BF>

¹⁴⁷ <https://menr.gov.ua/news/32415.html>

¹⁴⁸ <http://zakon.rada.gov.ua/laws/show/244-2018-%D1%80>

¹⁴⁹ <https://www.kmu.gov.ua/storage/app/uploads/public/5bc/e01/b98/5bce01b982138521614714.doc>

¹⁵⁰ <https://menr.gov.ua/news/32415.html>

¹⁵¹ http://www.geo.gov.ua/wp-content/uploads/2018/07/roadmap_auct-1.pdf

¹⁵² <https://www.kmu.gov.ua/ua/news/volodimir-kistion-uryad-vidkrivaye-shlyah-dlya-prihodu-v-ukrayinu-novitnih-svitovih-tehnologij-gazovidobutku>

¹⁵³ http://www.geo.gov.ua/wp-content/uploads/2018/05/zmpostkmu1117_2017_ok_0.doc

¹⁵⁴ <https://menr.gov.ua/news/32415.html>

¹⁵⁵ https://menr.gov.ua/files/docs/nakazy/nakaz_475.pdf

¹⁵⁶ http://geo.gov.ua/sites/default/files/imce/nakaz_no_557.pdf

¹⁵⁷ <http://www.drs.gov.ua/wp-content/uploads/2018/04/4384-vid-07.05.18.pdf>

¹⁵⁸ http://www.drs.gov.ua/wp-content/uploads/2018/07/10137_19-18.pdf

¹⁵⁹ <http://www.drs.gov.ua/wp-content/uploads/2018/09/10020-vid-11.10.18.pdf>

¹⁶⁰ <http://zakon2.rada.gov.ua/laws/show/59-95-%D0%BF>

¹⁶¹ <http://zakon2.rada.gov.ua/laws/show/1079-2016-%D1%80/paran146#n146>

Oil

- approval of providing subsoil for use: the draft law on appropriate amendments to the Law of Ukraine On Local Self-Government in Ukraine was developed in early September 2017¹⁶², but has not yet been agreed and submitted to the Parliament for consideration (paragraph 36 of the plan¹⁶³).

The situation around the new wording of the Code of Ukraine on Subsoil did not change. According to the plan¹⁶⁴, the Ministry of Environment and Natural Resources, the State Service of Geology and Mineral Resources, the Ministry of Energy and Coal Industry and the Ministry of Economic Development and Trade are instructed to “continue the work towards the development of a new wording of the Code” (task 99, the implementation deadline – fourth quarter 2018), while the plan¹⁶⁵ provides for the approval of “the terms of reference for the EU project as regards the development of the new Subsoil Code of Ukraine” by the end of 2018 (task 9, priorities of the Ministry). Thus, the task 1 of the plan¹⁶⁶ and 64 of the plan¹⁶⁷ were canceled without any justification.

Instead, paragraph 5 of the action plan¹⁶⁸, contrary to the plans^{169,170}, the Ministry of Economic Development and Trade is instructed to develop and submit for approval the “draft Subsoil Code of Ukraine (new wording)” by the end of 2018 (!). In addition, according to the paragraph 4 of the same plan, the same executor and within the same term is charged with developing the draft Law On Amendments to the Subsoil Code of Ukraine, other laws of Ukraine, which should provide for:

- the procedure for alienating the right to use the subsoil by a subsoil user to third parties;
- the procedure for issuing special permits for the use of oil and gas subsoil on a transparent basis;
- change of powers of local self-government authorities by granting the right to issue special permits for the use of subsoil for mineral resources of local importance and the abolition of the requirement to approve special permits for the use of subsoil for mineral resources of national importance;
- simplification of procedures for issuance of permits, avoiding duplication in permitting procedures and additional financial burden;
- improvement of the system of control over subsoil use and liability for violations.

However, since even the action plan itself¹⁷¹ was finalized almost one month after its official approval on October 24, 2018, it is unlikely that its tasks will be performed within the set timeframe.

Meanwhile, in addition to the preparation of the mentioned documents, by the end of 2018 this plan provides for:

- development and submission for approval of the draft Government resolutions on amendments to the Procedure for Granting Special Permits for the Use of Subsoil¹⁷² in terms of improving the procedure and charging for the granting of special permits for the use of subsoil, and the introduction of an electronic system for filing documents using the electronic digital signature (responsible authority – Ministry of Environment and Natural Resources);
- drafting and submitting for approval of the draft Government resolution on amending the Regulation on the Procedure for Conducting State Expertise and Evaluation of Mineral Resources¹⁷³ in order to switch to internationally accepted hydrocarbon reserves assessment (PRMS, JORC, etc.) (responsible authority – Ministry of Environment and Natural Resources);
- adoption of the order “to create a software environment for the electronic submission of reporting by entities of disclosure in the extractive industries, as well as publication of the received data in the open data format” (responsible authority – Ministry of Energy and Coal Industry).

¹⁶² http://www.geo.gov.ua/wp-content/uploads/2018/05/proekt_zakonu_0.doc

¹⁶³ <https://www.kmu.gov.ua/storage/app/uploads/public/5bc/de8/62a/5bcde862a988c706756328.doc>

¹⁶⁴ <http://zakon5.rada.gov.ua/laws/show/497-2018-%D1%80>

¹⁶⁵ <https://menr.gov.ua/news/32415.html>

¹⁶⁶ http://geo.gov.ua/sites/default/files/imce/nakaz_no_557.pdf

¹⁶⁷ <http://www.drs.gov.ua/deregulation/plan-deregulyatsiyi-2016-2017-rr/>

¹⁶⁸ <http://zakon.rada.gov.ua/laws/show/842-2018-%D1%80>

¹⁶⁹ <http://zakon5.rada.gov.ua/laws/show/497-2018-%D1%80>

¹⁷⁰ <https://menr.gov.ua/news/32415.html>

¹⁷¹ <http://zakon.rada.gov.ua/laws/show/842-2018-%D1%80>

¹⁷² <http://zakon.rada.gov.ua/laws/show/615-2011-%D0%BF#n11>

¹⁷³ <http://zakon.rada.gov.ua/laws/show/865-94-%D0%BF>

Article 276 of the Association Agreement as regards the prevention of disruptions in the transit and transportation of oil and petroleum products

On November 2, 2018, the State Regulatory Service, by its decision No. 479¹⁷⁴, agreed on the draft Order of the Ministry of Energy and Coal Industry, submitted pursuant to Article 276 (a) and the Government Resolution¹⁷⁵, On Approval of the Regulation on the Commission on the Decommissioning of Main Pipelines of Oil, Gas and Products of their Processing¹⁷⁶. This document defines the main tasks of the Commission, its rights, the powers of the chairman of the Commission, the rights and obligations of its members, the sequence of actions of the Commission for consideration of documents prepared by the business entity, execution of the minutes and preparation of proposals for the decommissioning of the main pipeline or refusal to do so.

Article 279 of the Association Agreement as regards ensuring equity of access and exercising of the activities of prospecting, exploring and producing hydrocarbons

In pursuance of paragraph 4 of Article 279, according to which all entities authorized to perform exploration, extraction and production of hydrocarbons must pay a certain contribution, the procedure of which must be duly recorded, the royalties for the use of mineral resources for extraction oil and gas condensate of January 1, 2019 will be increased by 2 percentage points:

- from 29 to 31% of the value of commodity products for deposits located at a depth of up to 5,000 m;
- from 14 to 16% – for deposits located at a depth of more than 5,000 m.

Corresponding changes were made in accordance with the draft law adopted by the Verkhovna Rada at seconde reading and as a whole on November 23, 2018 (registration number 9260¹⁷⁷)¹⁷⁸. However, according to the market participants, the annual change in rent payment for the use of subsoil (the previous one took place on January 1, 2018¹⁷⁹) complicates the planning of their activities and does not facilitate the attraction of investors' funds for the development of oil fields.

On November 28, 2018, the State Service of Geology and Mineral Resources and the Ukrainian Energy Exchange entered into the agreement on the sale of permits for the use of soil through the ProZorro.Sales system at sale.ueex.com.ua. It was announced that on December 4, 2018, the first 10 lots will be put up in Prozorro.Sales¹⁸⁰, and the "first oil and gas auction" will take place on December 6¹⁸¹. However, since, as of December 5, 2018, there are only two oil and gas plots to be put up on tender on January 30¹⁸² (Kadobnianska, Ivano-Frankivsk region) and on February 12, 2019 (Surmachivska, Sumy region)¹⁸³, no "first international auction", which was to cover 44 oil and gas fields¹⁸⁴, most likely, will not take place in January-February 2019.

It is unlikely that paragraphs 2 and 3 of the action plan¹⁸⁵, by which the State Service of Geology and Mineral Resources was instructed to hold the following auctions by the end of 2018, will be performed:

- an auction for obtaining special permits for the use of subsoil or a competition for the conclusion of production-sharing agreements, which will require at least five (!) plots on the continental shelf and the exclusive (marine) economic zone for the exploration and production of hydrocarbons;

¹⁷⁴ <http://www.drs.gov.ua/wp-content/uploads/2018/10/10693-vid-02.11.18.pdf>

¹⁷⁵ <http://zakon.rada.gov.ua/laws/show/209-2018-%D0%BF>

¹⁷⁶ http://mpe.kmu.gov.ua/minugol/control/uk/publish/article?art_id=245306373&cat_id=35082

¹⁷⁷ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=64888

¹⁷⁸ As of December 5, 2018, the adopted law was being prepared for signature.

¹⁷⁹ <http://zakon.rada.gov.ua/laws/show/2245-viii>

¹⁸⁰ <http://www.geo.gov.ua/derzhgeonadra-vistavlyatime-na-prodazh-specdozvoli-na-majdanchiku-ueb-cherez-sistemu-prozoro-prodazhi/>

¹⁸¹ <http://www.geo.gov.ua/v-ukra%D1%97ni-startuyut-pershi-elektronni-naftogazovi-aukcioni-2/>

¹⁸² <http://www.geo.gov.ua/organizator-aukcionu-derzhavna-sluzhba-geologi%D1%97-ta-nadr-ukra%D1%97ni-ogoloshuye-pro-provedennya-i-aukcionu-2019-roku-z-prodazhu-specialnix-dozvoliv-na-koristuvannya-nadrami/>

¹⁸³ <http://www.geo.gov.ua/organizator-aukcionu-derzhavna-sluzhba-geologi%D1%97-ta-nadr-ukra%D1%97ni-ogoloshuye-pro-provedennya-ii-aukcionu-2019-roku-z-prodazhu-specialnix-dozvoliv-na-koristuvannya-nadrami/>

¹⁸⁴ <http://www.geo.gov.ua/kabmin-zatverdiv-proekt-vprovadzheniya-elektronnix-torgiv-z-prodazhu-specdozvoliv-na-koristuvannya-nadrami/>

¹⁸⁵ <http://zakon.rada.gov.ua/laws/show/842-2018-%D1%80>

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- open auctions for the sale of special permits for the use of subsoil plots by reducing the number of instances of their provision outside the auctions, at which at least 50 (!) new plots for exploration and production of hydrocarbons will be proposed.

Indirectly this is confirmed by the information on the approval of providing for use of only 2 of 13 oil and gas subsoil plots, special permits for the development of which were planned to be put up for auction by the State Service of Geology and Mineral Resources before December 1, 2019, at sessions of Ivano-Frankivsk, Lviv, Chernihiv and Sumy regional councils¹⁸⁶.

Article 280 of the Association Agreement as regards ensuring transparency in granting licenses for prospecting or exploring hydrocarbons

On November 7, 2018, by Resolution No. 939, the Government approved the new Procedure for Use of Geological Information¹⁸⁷, which defines the procedures for granting for use and sale of information on subsoil obtained following the results of the work related to subsoil geological exploration, field exploitation or the use of subsoil for another purpose. According to this document:

- an open catalog of information about geological information, in which all data will be accounted for, regardless of their type and form of ownership, is introduced. In particular, it will contain a list of geological works (without disclosure of their contents), performed by the subsoil user at the licensed area;
- a free and open access to state geological information is provided. The investor will be able to independently study it online and nominate the area for auction. The successful bidder will reimburse the cost of information;
- a clear and transparent procedure for the acquisition of geological information created (purchased) at the own funds of legal entities and individuals, which provides for the access to it to all interested persons on equal terms, is established;
- the procedure of preliminary approval in the State Service of Geology and Mineral Resources of the transfer of geological information created (purchased) at own funds of legal entities and individuals is replaced to informing;
- exclusive grounds for refusal to sale geological information are established;
- the possibility of studying by the third parties of the geological information, transferred to the subsoil user under the contract of sale of the right to use it, for the performance by these parties of a part of work and/or the provision of services.

In addition, noting the significant liberalization of the circulation and the simplification of access to the information on subsoil, market participants are concerned about the insufficient level of funding of Geoinform activity related to digitization of geological information, including in order to maintain a directory of information about it.

It should be noted that the procedure approved on November 7, 2018 had to be approved in the first quarter of 2017 (task 206 of the plan¹⁸⁸ and 7 of the plan¹⁸⁹). Since the Ministry of Environment and Natural Resources repeatedly tried to circumvent the procedures established by the Rules¹⁹⁰, the State Regulatory Service separately addressed it to the request to submit a finalized draft document for approval (letter No. 8185/0/20-18 of August 13, 2018¹⁹¹), but did not receive any response.

Article 337 of the Association Agreement in terms of informing and protecting customers from unfair selling practices, and access to oil products, including liquefied petroleum gas, for consumers, including for the most vulnerable citizens

¹⁸⁶ <http://www.geo.gov.ua/derzhgeonadra-vdruge-zvertayetsya-do-vladi-gazonosnix-oblastej-pogoditi-specdozvoli-na-aukcioni/>

¹⁸⁷ <https://www.kmu.gov.ua/ua/npas/pitannya-rozporjadzhennya-geologichnoyu-informaciyeyu>

¹⁸⁸ <http://www.kmu.gov.ua/document/249935381/R0275.doc>

¹⁸⁹ <http://zakon2.rada.gov.ua/laws/show/1079-2016-%D1%80/paran146#n146>

¹⁹⁰ <http://zakon.rada.gov.ua/laws/show/950-2007-%D0%BF>

¹⁹¹ <http://www.drs.gov.ua/wp-content/uploads/2018/07/8185-13.08.18.pdf>

Oil

The Government resolution, which regulated the issue of determining the starting price of liquefied natural gas sold at specialized auctions for the needs of the households (paragraph nine of clause 19 of the procedure¹⁹²) entered into force on November 1, 2018. It will be determined at the price of natural gas for the needs of the households (adjusted for different heat of combustion), which is calculated on the basis of the regulation¹⁹³.

In order to strengthen the control over fuel consumption and protect consumers from dishonest pricing methods, from July 1, 2019, the electronic fuel management system will show its actual movement by storage locations, and not by business entities. The relevant amendments are provided for by the draft law adopted on November 23, 2018 (registration number 9260¹⁹⁴)¹⁹⁵.

¹⁹² <http://zakon.rada.gov.ua/laws/show/570-2014-%D0%BF#n24>

¹⁹³ <https://www.kmu.gov.ua/ua/npas/pro-zatverdzhennya-polozhennya-pro-pokladennya-specialnih-obovyazkiv-na-subyektiv-rinku-prirodnogo-gazu-dlya-zabezpechennya-zagalnosuspilnih-interesiv-u-procesi-funkcionuvannya-rinku-prirodnogo-gazu>

¹⁹⁴ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=64888

¹⁹⁵ As of December 5, 2018, the adopted law was being prepared for signature.

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The draft law which provided for a significant improvement of the legislation in the area of procurement did not find support at first reading in the parliament. MPs voted negatively, thus, it took about a year to undergo a bureaucratic procedure, and the draft law will have to be re-registered. Also, for the sixth month, the competition for the positions of two members of the NEURC remains blocked, which creates a burden on the current members of the Commission, which in turn increases the risk of poor quality of the decisions.

The launch of a pilot project on the sale of land lease rights through the ProZorro.Sales system and methodological explanations by the Antimonopoly Committee of some terms of the competition law may be mentioned among positive aspects. Meanwhile, one of the most effective mechanisms of influence and positive stimulation of Ukrainian authorities by international partners is the provision of macro-financial support in exchange for structural reforms. The provision of EUR 1 billion by the European Union is no exception.

Articles 150, 153 on public procurement (as regards the implementation of certain provisions of Directives 2014/24/EC, 2014/25/EC, 89/665/EEC and 92/13/EEC)

In the Verkhovna Rada of Ukraine, the draft law No. 8265¹⁹⁶, which includes a number of innovations, in particular, the legal regulation of pre-purchase procurement for up to UAH 200 thousand for goods and services and UAH 1.5 million for work under the new simplified procedure, was rejected at first reading. Improving the complaints mechanism and the opportunity for business to correct technical errors after the auction are among other things. It was also provided for that the manager would have to enter all purchases, and not just over-thresholds, into the annual procurement plan, which would open up wider opportunities for participation of small businesses in public procurement. Despite the negative result of the vote, the initiators of the draft law plan, once again, to submit it to the VRU after finalization¹⁹⁷.

Meanwhile, the implementation of the mechanism for renting land plots through the ProZorro.Sales electronic platform. As of the date of the message, the minimal ready functionality for launch has already been implemented and, as reported by SE ProZorro.Sales and the State Service of Geodesy, Cartography and Cadastre, in case of success of pilot auctions, the mechanism will be scaled up¹⁹⁸.

Articles 255, 256 on anticompetitive actions and mergers

The AMCU approved the Methodological Recommendations defining the term “control”, which is extremely important in further defining the business entity to understand its position in the market, this term also plays a key role in investigating cases of abuse of a monopoly position and on anti-competitive concerted business actions. These guidelines will ensure a unified approach to the interpretation and application of the term “control” in the Law On the Protection of Economic Competition.

Article 378-379 on creation of favorable conditions for doing business

The draft Law amending Article 22 of the Law of Ukraine On Heat Supply is registered with the VRU. The draft excludes from this article debt obligations of a business entity that has been granted a lease, concession, or management of a holistic property complex, or part of the property for the production of thermal energy. In accordance with the current legislation, such entity becomes the successor in debt obligations for payment for consumed energy and transportation services incurred by the owner¹⁹⁹.

The VRU ratified the Memorandum on the receipt by Ukraine of macro-financial aid of the European Union

¹⁹⁶ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=63852

¹⁹⁷ <https://prozorro.gov.ua/news/u-parlamenti-ne-pidtrimali-vdoskonalennya-prozorro>

¹⁹⁸ <http://www.me.gov.ua/News/Detail?lang=uk-UA&id=58b2f983-bd9f-4011-b60a-90e9ebe34dff&title=Prozorro-prodazhiZapuskaAuktsioniZOrendiZemli>

¹⁹⁹ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=64956

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in the amount of up to EUR 1 billion. Obtaining involves fulfilling a number of requirements for the implementation of socio-economic reforms, including in the energy sector, namely: to achieve the implementation of legislation on the electricity market, including the preparation of Ukrenergo for the certification as an independent transit operator and for separating control over electricity generation (in particular, NNEGC Energoatom and UkrHydroEnergo) and transmission of electricity (in particular, Ukrenergo)²⁰⁰.

Article 277 on the Regulator (provisions of Directives 2009/72/EC and 2009/73/EC in terms of the regulatory authority)

For the sixth month, the competition for two vacant positions in the NEURC was frozen through lawsuits of D.Vovk and A.Hudachenko as regards the decision of the Competition Commission not to allow them to participate in the selection, which caused by the candidates' lack of five years experience in the field of energy. Accordingly, the current 5 members of the Regulator continue to share the functions of 7 members, which creates risks in the context of the quality of work.

²⁰⁰ http://zakon.rada.gov.ua/laws/show/984_001-18#n3 , <http://zakon.rada.gov.ua/laws/show/2613-19>

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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 Chernobyl accident. Acquis concerned:

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

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

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

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

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

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

Article 338, Chapter 1, Title V

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

Article 339, Chapter 1, Title V, coal market

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

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

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

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

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

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

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

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

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

Directive 2010/30/EU

Directive 2010/31/EU

Directive 2006/32/EU

Directive 2012/27/EU

Directive 2009/72/EC (social issues)

Articles 338, 341 of the Association Agreement

Directive 2009/73/EC (social issues)

Articles 338, 341 of the Association Agreement

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

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

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

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

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

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

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

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ANNEX 2.

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

Gas

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

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

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

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

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

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

Electricity and Nuclear Security

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

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

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

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

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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.

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

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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;
- 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

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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 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.

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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.

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. 1882/2003²⁰¹

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.

²⁰¹ The official translation has a lot of mistakes resulting from inaccurate translation

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

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

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

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

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

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

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

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