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**MUNICIPAL HEATING  
REFORM IN UKRAINE**

# MUNICIPAL HEATING REFORM PROJECT (MHR)

**Conduct stocktaking of legal, regulatory and Institutional  
frameworks and capacities in heat sector**

**September 2009**

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## INTRODUCTION

The technical and financial status of the majority public utilities in Ukraine providing housing and communal services shows a rigid tendency towards degradation.

The present rather dangerous depreciation level of production facilities, high energy intensity and low efficiency of the communal systems, considerable water and heat losses, unsatisfactory quality of housing and public utility services provided to residential consumers that is not able to address the actual needs of the society requires vigorous actions of the state to overcome the current negative trends, particularly in heat sector.

To ensure further development and update of the housing and public utilities infrastructure, the long-term communal sector upgrade and progress policy shall be formulated in line with its financial, legal and regulatory lines of approach.

The objective of this paper is to make revision of legal, regulatory and organizational provisions applicable in heat sector, aimed at exposing problematic issues that require thorough examination and management.

In the present review analysis of the Ukrainian legal frameworks governing the heat sector issues and basic program documents in the municipal heating sector has been carried out, as well as the assessment of institutional capacities for municipal heating reform conducted, and stocktaking of regulatory and institutional frameworks and capacities in heat sector performed.

Our trust is that the present review shall be advantageous for the public utility officials who address the issues of modernization and development of the heating infrastructure.

**ANALYSIS OF THE EXISTING UKRAINIAN LEGISLATION IN THE FIELD OF HEAT SUPPLY. PROPOSALS ON INTRODUCTION OF CHANGES AND AMENDMENTS TO THE LEGAL FRAMEWORK.**

**Table 1. UKRAINIAN LEGISLATIVE ENHANCEMENTS IN THE FIELD OF HEAT SUPPLY**

<b>No.</b>	<b>Legislative Enactments of Ukraine</b>	<b>Purview of Enactment</b>	<b>Enactment Enhancement Proposals of the Consultant</b>	<b>The actions for the improvement of the Law</b>
1.	<b>The Commercial Code</b> Adopted on January 16, 2003, No. 436-IV, became effective since January 1, 2004	The Code settles general issues of the economy regulation.	Presently not required.	
2.	<b>The Law of Ukraine «On Natural Monopolies»</b> Adopted on April 20, 2000, No. 1682-III	The Law defines legal, economic and organizational frameworks for public regulation of natural monopolies. Also, it is established by the Law that district heating is a natural monopoly.	Presently not required.	
3.	<b>The Law of Ukraine «On Heat Supply»</b> Adopted on June 2, 2005, No. 2633-IV	The Law governs relations relating to production, transportation, supply and use of thermal energy.	The Law requires further enhancement of such issues as tariff formation, settlements for thermal energy consumed, update and development of heating facilities. In addition, the reviewed Law shall provide for authority punishments	The drafts of the Laws of Ukraine on amendments to the Law of Ukraine “On Heating” No2336 from 07.04.2008 and No4008 from 04.02.2009 are under consideration in the Verhovna Rada of Ukraine. Nevertheless, there is no complex regulation of defined

			(punitive measures) to be imposed by the regulatory body to license provisions breakers, as well as special features of the licensing procedure for natural monopoly market agents acting in the field of heat supply.	problems in these drafts of the laws.
4.	<b>The Law of Ukraine «On Housing and Communal Services»</b> Adopted on June 24, 2004, No. 1876-IV	The Law defines fundamentals of organizational and economic relationships arising in the field of provision and consumption of housing and communal services, sets authorities of state bodies and local governments, rights and obligations of the participants, the essence of contract between service providers and consumers.	The Law requires further enhancement with regard to differentiation of such concepts as «goods» and «services», clarification of powers of regulating authorities, settlement of relations between agents acting in the field of housing and communal services.	The draft of the Law of Ukraine “On changes to the Law of Ukraine “On Housing and Communal Services” No4686 from 23/06/2009 developed by the Ministry for Housing and Communal Economy of Ukraine and presented by the Government of Ukraine is registered in Verhovna Rada of Ukraine. The new reduction of the Law is proposed by this draft. The draft of this Law aims at the regulation of defined problems. It is important to provide consulting support of the process of the consideration of this draft of the Law by the committees of the Verhovna Rada.
5.	<b>The Law of Ukraine</b>	The Law defines types of activities that are subject	The Law is required to be	

	<p><b>«On Licensing of Certain Types of Economic Activity»</b> Adopted on June 1, 2000, No. 1775-III</p>	<p>to licensing, and the licensing procedure. It is established that production, transportation and supply of thermal energy is subject to licensing.</p>	<p>supplemented with a regulation to provide for a possibility to identify special features of licensing of heating activities in a special law governing the related issues.</p>	
6.	<p><b>The Law of Ukraine «On Combined Generation of Thermal and Electric Energy (Co-Generation) and Use of Spill Energy»</b> Adopted on April 5, 2005, No. 2509-IV</p>	<p>The Law specifies the legal, economic and organizational basis for carrying out activities in the field of use of co-generation facilities, governs issues related to special features of generation, transmission and supply of electric and thermal energy produced by co-generation facilities.</p>	<p>Presently not required.</p>	
7.	<p><b>The Law of Ukraine «On Local State Administrations»</b> Adopted on April 9, 1999, No. 586-XIV.</p>	<p>Pursuant to the Law, authorities of local state administrations include regulation of prices and tariffs for provision of housing and communal services.</p>	<p>Authorities of local state administrations are subject to further clarification because based on other applicable rules and regulations the local state administrations grant licenses for heat supply activities, while regulation of prices and tariffs in this field shall be carried out by local institutions of self-government.</p>	<p>It is necessary to analyze the EU requirements; the EU Member States experience in this sphere and develop the draft of the Law on changes to defined Law.</p>
8.	<p><b>The Law of Ukraine</b></p>	<p>As defined by the Law, authorities of executive</p>	<p>Authorities of local councils</p>	<p>It is necessary to analyze the EU</p>

	<p><b>«On Local Self-Government in Ukraine»</b> Adopted on May 21, 1997, No. 280/97-VR</p>	<p>bodies of local councils include setting of tariffs for housing and communal services provided by enterprises and organizations of communal property of the relevant territorial community, and receiving endorsement on these issues from enterprises, institutions and organizations not belonging to the communal property.</p>	<p>are subject to further clarification because regulation of prices and tariffs in the field of heat supply shall be performed regardless of the property form of heating facilities.</p>	<p>requirements; the EU Member States experience in this sphere and develop the draft of the Law on changes to defined Law.</p>
9.	<p><b>The Law of Ukraine «On the National Program of Housing and Communal Sector Reform and Development for the Years 2004 – 2010»</b></p>	<p>The Law and the Program have been amended, so that the program expiration date was extended up to the year 2014. The objective of the Program is to outline basic principles for realization of public policy with regard to carrying out of the reform in the housing and communal sector, performing activities aimed at increasing its efficient and reliable operation, ensuring sustained development in order to satisfy residential and industrial consumers with the housing and communal services according to the established norms and national standards. Main tasks of the Program are as follows:</p> <ul style="list-style-type: none"> <li>– development of public regulation of natural monopolies' activity in the field of communal services;</li> <li>– re-equipment of community facilities, reduction in specific indicators of use of energy and physical resources necessary for production (provision) of housing and communal services, including creation of effective and transparent mechanism to provide adequate incentives for</li> </ul>	<p>By virtue of the introduced amendments clarification of tasks set by the Program, their implementation timeframes and scopes of funds allocated for the Program implementation have been made.</p>	<p>Adopted on June 24, 2004, No. 1869-IV. Amended on June 11, 2009.</p>

		use of alternative energy and fuel sources.		
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**Table 2. DRAFT LAWS OF UKRAINE GOVERNING HEATING ISSUES**

No.	Draft Laws	Purview of Draft Law	Consultant's Notes	Enactment review status
1.	<p><b>Draft Law of Ukraine «On Introduction of Changes to Certain Laws on Restructuring of Debts of Enterprises Providing Housing and Communal Services»</b>  <i>Registered in the Parliament of Ukraine on 05.02.2008, No. 2003, by the parliamentarian O.P. Popov</i></p>	<p>It is proposed in the Draft Law to envisage in the laws of Ukraine «On the Procedure of Extinction of Obligations of Tax Payers to Budgets and State Earmarked Funds» and «On Restructuring of Residential Rent Debts for Housing and Communal Services, Gas and Electricity Consumed» such provisions based on which public utilities companies and energy providers will be exempted from payment of penalties imposed on their tax debt out of payments to budgets of all levels. Also, it is envisaged that arrears of these enterprises for energy carriers consumed to energy supplying companies shall be restructured for the amount of restructured residential debts for housing and communal services consumed.</p>	<p>At adopting of the Law «On Restructuring of Residential Rent Debts for Housing and Communal Services, Gas and Electricity Consumed» and at providing benefits to housing and communal services consumers, no mechanism of compensation of losses to public utilities companies has been envisaged. The issue raised by the author of the legislative initiative in the concerned Draft Law is a burning problem. However, the Draft Law still requires further elaboration with regard to the following:</p> <p>1) realization of introduced proposals may result in violations of the right of property of the energy supplying companies thus coming in conflict with a number of provisions of other legislative enactments;</p> <p>2) it is not clearly stated there which exactly enterprises fall under the regulations of the Draft Law and thus it may cause misapplications.</p>	<p>Under consideration of the involved Committees of the Parliament of Ukraine.</p> <p>The Tax and Customs Policy Committee is the principal committee headed by S.A.Teryokhin.</p>

No.	Draft Laws	Purview of Draft Law	Consultant's Notes	Enactment review status
2.	<p><b>Draft Law of Ukraine «On Introduction of Changes to Certain Legislative Enactments of Ukraine (Regarding Arrangement of Relationships in the Field of Heat Supply)»</b>  <i>Registered in the Parliament of Ukraine on 16.05.2008, No. 2505, by parliamentarians S.V. Pashynsky, Z.V. Shkutyak and others</i></p>	<p>The Draft Law envisages amending of the laws of Ukraine „On Heat Supply”, „On Housing and Communal Services”, «On Local Self-Government in Ukraine» with respect to creation and operation of regional representative offices of the National Electricity Regulatory Commission which act as legal entities and are empowered to solely set tariffs for heat suppliers in the respective region making use of the methodological support of the central regulating body. In other words, de facto it means establishment of local regulating bodies empowered to set tariffs instead of the local authorities.</p>	<p>The Draft Law envisages profound changes to the public regulation system in the field of heat supply which require well-grounded investigation and thorough preparation in line with substantial financial expenditures. To date adoption of this Draft Law is not advisable.</p>	<p>Under consideration of the involved Committees of the Parliament of Ukraine. The Committee on Construction, Municipal Development, Housing and Communal Services, and Regional Policy is the principal committee headed by V.V. Rybak.</p>
3.	<p><b>Draft Law of Ukraine "On Communal Property in Ukraine"</b>  <i>Registered in the Parliament of Ukraine on 06.06.2008, No. 2617, local elf-gove by the parliamentarians Z.V. Shkutyak, O.P. Popov and others</i></p>	<p>The Draft Law settles the communal property issues: defines mechanisms of the objective use of the communal property, sets restrictions with regard to subjects of the communal property. Also, the Draft Law determines special features of application of the communal right for land and natural resources, as well as the procedure of purchase of lands by institutions of local self-government for social needs. The Draft Law envisages the procedure of delegation of management of the communal right facilities and special features of disposition of this property rights, free</p>	<p>The Draft Law duplicated provisions of the Civil Code and the Economic Code of Ukraine, the Law of Ukraine «On Local Self-Government in Ukraine», and at the same time its provisions not necessarily agree with the above mentioned provisions of the other laws. The Draft Law only superficially defines such issues as transfer of communal right facilities, their disposition and privatization, thus leaving grounds for misapplications and abuses in these fields.</p>	<p>Under consideration of the involved Committees of the Parliament of Ukraine. The Economic Policy Committee is the principal committee headed by O.M. Tkachenko.</p>

No.	Draft Laws	Purview of Draft Law	Consultant's Notes	Enactment review status
		<p>transfer of the relevant facilities to the public property and privatization of communal right facilities.</p> <p>The proposed Draft Law sets the responsibility of communal assets owners and legal entities created by the latter for their liabilities.</p>		
4.	<p><b>Draft Law of Ukraine «On Introduction of Changes to the Law of Ukraine "On Value Added Tax" with Regard to Special Regime of Taxation of Activities Relating to Provision of Housing and Communal Services and/or Thermal Energy»</b>  <i>Registered in the Parliament of Ukraine on 24.12.2008, No. 3544, by the parliamentarians M.Ya. Azarov, V.V. Rybak and O.P. Popov</i></p>	<p>It is proposed by the Draft Law to introduce a special regime of taxation by imposing of a value added tax on, particularly, the heat supply activity. Based on this approach, entities shall have the right to deduct the VAT amount levied upon activities connected with the provision of housing and communal services, so that it may be used for the purpose of re-equipment of heating facilities, implementation of energy saving technologies and promotion of investments of public utilities enterprises.</p>	<p>Taking into consideration of the important social significance of services provided by public utilities companies, the concerned special regime of VAT taxation may be applied within a certain period of time in the municipal housing sector.</p>	<p>Under consideration of the involved Committees of the Parliament of Ukraine.</p> <p>The Tax and Customs Policy Committee is the principal committee headed by S.A.Teryokhin.</p>
5.	<p><b>Draft Law of Ukraine «On Introduction of Changes to the Law of Ukraine "On Housing and Communal Services» (regarding application of</b></p>	<p>The Draft Law introduces a reduced tariff (10 percent reduction) for housing and communal services for conscientious payers.</p>	<p>Introduction of a reduced tariff implies obligations to recover out of funds of the relevant local budget the difference between the established level of prices/tariffs and the economically sound expenditures required for</p>	<p>Under consideration of the involved Committees of the Parliament of Ukraine.</p>

No.	Draft Laws	Purview of Draft Law	Consultant's Notes	Enactment review status
	<p><b>reduced tariffs for housing and communal services)</b>  <i>Registered in the Parliament of Ukraine on 28.01.2009, No. 3667, by the parliamentarians O.P. Popov, M.M. Papiyev</i></p>		<p>production of services, thus resulting in the increase of a burden for local budgets.  Apart from that, the Law of Ukraine «On Housing and Communal Services» envisages a mechanism for provision of timely payments by consumers for provided housing and communal services in a form of punitive measures in case of contractual delinquency.</p>	<p>The Committee on Construction, Municipal Development, Housing and Communal Services, and Regional Policy is the principal committee headed by V.V. Rybak.</p>
6.	<p><b>Draft of the new version of the Housing Code of Ukraine</b>  <i>Ministry for Housing and Communal Services</i>  <i>Registered in the Parliament of Ukraine on 30.03.2009, No. 2307-1</i></p>	<p>The Draft Law establishes the essential legal concepts, provides for the regulation of legal relationships arising in the course of realization by citizens of Ukraine of their constitutional right for accommodation, and regulates issues of efficient maintenance and preservation of available housing stock.</p>	<p>The Draft Law does not provide for the adequate level of systematization of the housing legislation, particularly, as related to the housing and communal services issue, since after its adoption the Law of Ukraine «On Housing and Communal Services» will remain in force. The Draft Law is focused on settlement of certain issues which are already settled by the concerned Law. We consider this fact may just complicate application of the respective regulations after the Draft Law is passed.</p>	<p>Under consideration of the Parliament of Ukraine, on the agenda.   The Industrial and Regulatory Policy and Entrepreneurship Committee headed by N.Yu. Korolevska.</p>
7.	<p><b>Draft Law of Ukraine «On Introduction of Changes to Certain Laws Ukraine Regarding the Operation of Economic Agents at the</b></p>	<p>It is proposed by the Draft Law to introduce changes to the laws of Ukraine «On Licensing of Certain Types of Economic Activity» and «On Heat Supply» aimed at improving of the procedure of licensing of</p>	<p>Adoption of this Draft Law shall contribute to the improvement of the procedure of economic agents' licensing in the field of heat supply.</p>	<p>Under consideration of the involved Committees of the Parliament of Ukraine.</p>

No.	Draft Laws	Purview of Draft Law	Consultant's Notes	Enactment review status
	<p><b>Communal Services Market»</b>  <i>Ministry for Housing and Communal Services</i>  <i>Registered in the Parliament of Ukraine on 04.06.2009, No. 3437</i></p>	<p>the economic agents' activity in the field of heat supply, in particular, by introducing such sanctions for violations of license terms as amercements and assignation of the interim administration.</p>		<p>The Fuel and Energy Complex, Nuclear Policy and Nuclear Safety Committee headed by M.V. Martynenko</p>
8.	<p><b>Draft Law of Ukraine «On Introduction of Changes to the Law of Ukraine "On Heat Supply»</b>  <i>Ministry for Housing and Communal Services</i>  <i>Registered in the Parliament of Ukraine on 04.02.2009, No. 4008</i></p>	<p>Much prominence is given by the Draft Law to creation of adequate conditions for ensuring of planned update, rehabilitation and construction of heating facilities.  It is proposed by the Draft Law to introduce such new terms as „current accounts with a special application regime for carrying our settlements under technical development programs” (special accounts to be settled in the frame of implementation of the technical development program) and „technical development program”.  In addition, the Draft Law envisages new requirements to design, construction, rehabilitation and modernization of heating facilities, as well as new approaches to reviewing of tariffs for reduction in case of misapplication of tariff-earned funds.</p>	<p>Adoption of this Draft Law shall contribute to application of efficient forms of public administration, regulation and management in the heat supply related areas that, in its turn, shall influence upon the abatement of social tension caused by non-efficient operation of heat supply enterprises.</p>	<p>Under consideration of the involved Committees of the Parliament of Ukraine.</p>
9.	<p><b>Draft Law of Ukraine «On Introduction of Changes to the Law of Ukraine "On Housing and Communal Services»</b></p>	<p>New version of this Law is under review. The Draft Law envisages improved approaches to differentiation of such concepts as «goods» and «service», clarification of authorities of regulating</p>	<p>The proposed improvements of the Law provisions shall have a positive impact on the activity of economic agents in the field of housing and communal services.</p>	<p>Under consideration of the Secretariat of the Cabinet of Ministers of Ukraine.</p>

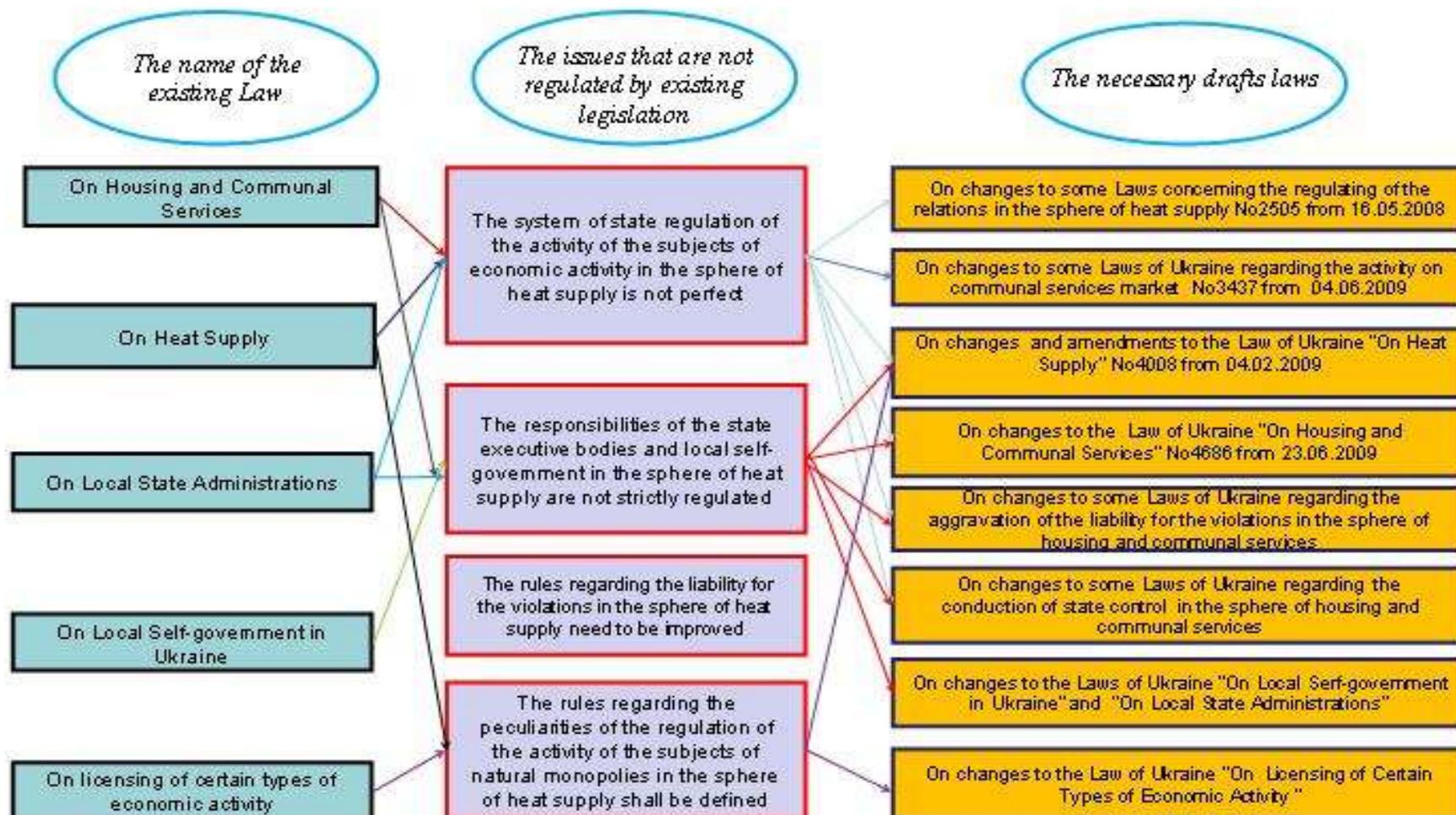
No.	Draft Laws	Purview of Draft Law	Consultant's Notes	Enactment review status
	<i>Ministry for Housing and Communal Services Submitted to Cabinet of Ministers of Ukraine on 26.02.2009</i>	bodies, settlement of relations between agents acting in the municipal housing area.		
10.	<b>Draft Law of Ukraine «On Introduction of Changes to Certain Legislative Enactments of Ukraine Regarding Strengthening of Responsibility for Delinquencies in the Municipal Housing Sector»</b> <i>Ministry for Housing and Communal Services</i>	The Draft Law of Ukraine «On the Responsibility for Delinquencies in the Municipal Housing Sector» establishes responsibility of legal relationship agents acting in the field of municipal housing for delinquencies in the concerned area and is focused on strengthening of public control with respect to adherence to the requirements of standards, norms, procedures and regulations as applied to the housing and communal services sector. Also, the Draft Law governs issues related to the operation of the newly created State Housing and Communal Inspectorate and its local bodies. It is proposed to amend the administrative Offences Code of Ukraine and the laws of Ukraine «On Housing and Communal Services», «On Potable Water and Potable Water Supply», «On Heat Supply», specifically with regard to imposition of responsibility for violations in the municipal housing sector.	Settlement of issues relating to the responsibility for delinquencies in the field of housing and communal services shall have a positive impact on the activity of economic agents in the concerned area.	Submitted for review and approval to the involved Ministries.
11.	<b>Draft Law of Ukraine «On</b>	The Draft Law introduces a mechanism for	Ensuring state control in the municipal	Under consideration

No.	Draft Laws	Purview of Draft Law	Consultant's Notes	Enactment review status
	<p><b>Introduction of Changes to Certain Legislative Enactments of Ukraine Regarding Execution of Public Control in the Field of Housing and Communal Services»</b>  <i>Ministry for Housing and Communal Services</i>  <i>Submitted to the Cabinet of Ministers of Ukraine on 14.05.2009</i></p>	<p>ensuring of public control in the field of housing and communal services.  The Draft Law settles the issue of administrative leverages exercised by the State Housing and Communal Inspectorate in order to adequately effect on law breakers in the concerned field. It is proposed to correspondingly amend the Administrative Offences Code of Ukraine and the laws of Ukraine «On Housing and Communal Services», «On Potable Water and Potable Water Supply», «On Heat Supply».</p>	<p>housing sector, settling operation-related issues of the State Housing and Communal Inspectorate shall have a positive impact on the activity of economic agents in the field of housing and communal services.</p>	<p>of the Secretariat of the Cabinet of Ministers of Ukraine</p>
12.	<p><b>Draft National Task Program of Modernization of the Communal Heat and Power Sector for the Years 2010-2014</b>  <i>Ministry for Housing and Communal Services</i></p>	<p>The objective of the Program is to increase economic and energy efficiency and reliability of operation of the municipal heat and power sector of Ukraine by means of its comprehensive modernization; significant decrease in natural gas consumption by heat and power engineering companies, optimization of production and consumption of thermal energy.  The main tasks of the Program are:  - to formulate the national policy of Ukrainian heat supply systems development;  - to promote the development of scientific and production capacities of the thermal energy system, introduction of new up-to-date technologies and progressive management;</p>		<p>The Draft Law is under consideration of the expert working group on the development of public regulation at the communal services market created by the Ministry for Housing and Communal Services.</p>

No.	Draft Laws	Purview of Draft Law	Consultant's Notes	Enactment review status
		- improvement of the financial management system for updating of the municipal housing sector.		
13.	<b>Draft Rules for Provision and Approval of Technical Specifications for Connection to Heat Networks</b> <i>Ministry for Housing and Communal Services</i>	The Rules govern relations arising in the course of connection of newly constructed, rehabilitated or updated heating facilities and facilities of thermal energy consumers to heat networks.		The Draft Law is under consideration of the expert working group on the development of public regulation at the communal services market created by the Ministry for Housing and Communal Services.
14.	<b>Draft Rules for Connection of Co-Generation Facilities to Heat Networks</b> <i>Ministry for Housing and Communal Services</i>	The Rules govern relations arising between heat transporting entities and their clients during attachment and connection of newly constructed, rehabilitated or updated co-generation installations of the clients to heat networks.		The Draft Law is under consideration of the expert working group on the development of public regulation at the communal services market created by the Ministry for Housing and Communal Services.
15.	<b>Draft Regulation of the Cabinet of Ministers of Ukraine «On Introduction of Changes to the Rules for</b>	It is proposed to amend the Rules with the provisions contributing to customers protection, namely: - the procedure of inspection of quantity and	The mentioned provisions of the Rules shall allow consumers to protect their rights to receive qualitative services in the required volume.	The Draft Law is under consideration of the expert working group on the

No.	Draft Laws	Purview of Draft Law	Consultant's Notes	Enactment review status
	<p><b>Provision of District Heating, Hot and Cold Water Supply and Water Sewerage Services and to the District Heating, Hot and Cold Water Supply and Water Sewerage Services Model Agreement»</b>  <i>Ministry for Housing and Communal Services</i></p>	<p>quality of services provided;  - the procedure of recalculation of the total amount of fees for district heating, hot and cold water supply and water sewerage services provided that do not comply with the established parameters.</p>		<p>development of public regulation at the communal services market created by the Ministry for Housing and Communal Services.</p>

## Improvement of the Legislation of Ukraine in the sphere of heating



## **I. The Legislation of Ukraine**

Relations in the field of heat supply are governed by Commercial Code of Ukraine No. 436-IV dated 16 January 2003, Law of Ukraine No. 1682-III «On Natural Monopolies» dated 20 April 2000, Law of Ukraine No. 1876-IV «On Housing and Communal Services» dated 24 June 2004, Law of Ukraine No. 2633-IV «On Heat Supply» dated 2 June 2005, Law of Ukraine No. 2509-IV «On Combined Generation of Thermal and Electric Energy (Cogeneration) and

Use of Spill Energy» dated 5 April 2005, Law of Ukraine No. 1775-III «On Licensing of Certain Types of Economic Activity» dated 1 June 2000, Law of Ukraine No. 280/97-VR «On Local Self-Government in Ukraine» dated 21 May 1997, Law of Ukraine No. 586-XIY «On Local State Administrations» dated 9 April 1999.

### ***1.1. The Commercial Code of Ukraine***

The Commercial Code of Ukraine (hereinafter called the Commercial Code) governs general issues of government regulation of the economy carried out in certain legal forms and by means of certain methods.

In particular, one of the basic methods of regulatory control exercised by the state over the activities carried out by economic agents is the following:

- certification and standardization;
- licensing, patenting and quoting;
- application of standards and limits;
- price and tariff regulation.

As provided by the Commercial Code, the conditions, scopes and order of application by the state of certain types of economic activity regulation methods may be also defined in some other enactments, as well as in economic and social development programs.

In accordance with the Commercial Code, one of the public regulation methods in the field of economic management is licensing of economic agents in certain fields of their activities.

**License** is a legislative instrument issued in accordance with the official pattern that verifies the right of an economic agent as a licensee to perform the indicated therein type of economic activities within the predetermined period of time subject to compliance with the licensing terms and conditions. Relations connected with licensing of certain types of economic activity are governed by the law.

The Commercial Code provides a definition of the natural monopoly that is presently pertinent to the centralized heat energy supply activity. Pursuant to the Commercial Code, the **natural monopoly** is such a state of the goods market at which satisfaction of market demands would be more efficient on conditions of non-availability of business competition due to certain manufacturing capabilities (i.e. substantial drop of production costs per product unit subject to the output volume increase), while goods (services) produced by economic agents can not be replaced for consumption purposes with some other products, thus making market demand less dependant on the change in prices for such goods in comparison to demand for any other goods or services.

Definition of special features inherent to the energy supply contract as provided by the Commercial Code: under the energy supply contract, the energy supply company (energy supplier) provides electrical energy, steam, hot and high pressure hot water (hereinafter called the energy) to a consumer (user) under condition that the later is obliged to pay for consumed energy, to adhere to the energy consumption mode as it is specified in the contract, as well as to ensure safe operation and maintenance of the energy equipment being in its use.

## ***1.2. The Law of Ukraine «On Natural Monopolies»***

The Law of Ukraine «**On Natural Monopolies**» dated 20 April 2000, No. 1682-III, provides definitions of the legal, economic and organizational frameworks for public regulation of activities of natural monopolies agents in Ukraine.

The subject of regulation of this Law is relationships emerging in Ukrainian goods markets having status of a natural monopoly and the neighboring markets between agents of natural monopolies.

As per the Law, the subject of regulation of activities of agents of natural monopolies is the following:

- prices (tariffs) for goods manufactured (sold) by agents of natural monopolies;
- access of consumers to goods manufactured (sold) by agents of natural monopolies;
- other conditions for implementation of entrepreneurial activities as it is specified by the law.

The Law introduced regulation of activity in those markets showing indications of a natural monopoly, as well as in the neighbouring markets. Particularly, the subject of regulation under this Law is the activity of natural monopoly market agents in the field of **district heating**.

**Generation of heat energy in volumes exceeding the level assigned by the relevant license conditions** is related to the neighbouring heat supply market.

Also, the Law stipulates obligations of natural monopoly market agents with respect to the following:

- adhering to the established pricing procedures, standards, safety and quality indices, as well as other conditions and rules for carrying out entrepreneurial activities, as provided in business licenses on conducting of entrepreneurial activities in the fields of natural monopolies and in neighbouring markets;

- maintaining of accounting records separately for each type of activity that is subject to licensing;
- providing nondiscrimination approach to sales of goods produced by market agents, as well as ensuring obstacle free environment for realization of agreements between producers acting on neighbouring markets and their consumers;
- providing to the respective regulating authorities documents and information necessary to exercise their powers, in the scope and within the time frames established by the relevant authorities;
- providing to public officers representing the relevant regulating authority access to documents and information necessary to exercise their powers, as well as to any facilities, equipment and lands being in ownership or in use of a market agent;
- on demand of natural and oil gas and electricity suppliers, accepting transfer of networks (facilities) constructed by or at the expense of consumers (investors, builders) from their books to the books of a natural monopoly market agent in accordance with the technical specifications;
- recovering of expenses incurred by consumers (investors, clients, builders) with regard to construction (reconstruction) of networks (buildings) in the amount and according to the procedures set by the Cabinet of Ministers of Ukraine.

The Law settles such issues as price (tariff) formation applied to agents of natural monopolies, in particular, it establishes that all expenses related to gross production and turnover expenditures shall be covered. Application of such provision of the Law resulted in a fact that all expenses, including those not related to provision of primary services and ineffective expenses are built into tariffs.

With regard to the above, the Law was amended with a legal proposition (that becomes effective on July 1, 2009) to set limits for expenses taken into account at adjusting of prices and tariffs for agents of natural monopolies.

In accordance with this requirement, in particular, the following expenses shall not be taken into account at forming prices and tariffs:

- amounts of uncollectible accounts receivable;
- amounts of recognized exemplary damages;
- amounts of optional contributions to legal entities and physical persons;
- amounts of shortages and losses due to impairment of assets;
- etcetera.

The noted provision of the Law is of a favourable nature and will enable the Cabinet of Ministers of Ukraine and other authorities exercising control over the activity of natural monopoly market agents to normatively limit expenditures allowed in the prices and tariffs for goods and services provided by agents of natural monopolies in order to decrease the relevant ineffective expenses.

### ***1.3. The Law of Ukraine «On Heat Supply»***

1.3.1. The Law of Ukraine «On Heat Supply» of June 2, 2005, No. 2633-IV, is the basic special law in the field of heating.

The Law governs relations relating to production, transportation, supply and use of thermal energy.

In accordance with Law the state control in the field of heat supply is exercised by:

- the Cabinet of Ministers of Ukraine, central bodies of executive power acting within the limits of their authorities at the national level;
- the Council of Ministers of the Autonomous Republic of Crimea, local state administrations at local level.

The Law provides for regulation of heating activities carried out by:

- local institutions of self-government;
- central bodies of executive power in the field of heat supply;

- the National Electricity Regulatory Commission of Ukraine;
- other central bodies of executive power within the limits of their powers.

Such regulation is performed in the form of:

- licensing of certain types of economic activity in this sphere;
- regulation of tariffs for production, transmission and supply of thermal energy;
- exercising control over the activity of entities in the field of heat supply;
- application of penalties for violation of license terms.

The Law stipulates general principles of heating tariffs formation.

1) Thermal energy tariffs are administered.

2) Tariffs for heat production, transportation and supply are approved by local governments (except for tariffs for thermal energy produced at combined heat and power plants, co-generation plants and non-conventional or renewable power sources installations, regulation of which is at discretion of the National Electricity Regulatory Commission of Ukraine).

3) Tariffs shall fully cover the cost price of thermal energy and ensure such level of profitability not to be less than the limiting profitability set by the Cabinet of Ministers of Ukraine as submitted by the relevant central body of executive power governing heating issues.

4) In case a heating tariff is temporally set lower than the cost price with the profitability level taking into account, the authority that fixed the corresponding tariff amount shall foresee a mechanism of price gap compensation as it is established by the applicable legislation.

5) Losses of heat generation and heat supply companies incurred as a result of exemptions from payment for thermal energy consumed that may be granted to certain categories of consumers are fully recovered from funding sources as it is established by the Ukrainian law providing for the related privileges.

6) It is the authority of the central body of executive power in the field of heating to develop tariff design procedures for generation, transportation and supply of thermal energy.

Relations between users of thermal energy and heating enterprises are governed by the Rules of Providing District Heating, Cold and Hot Water Supply, and Water Sewerage Services approved by the Cabinet of Ministers of Ukraine in its Resolution No. 630 dated July 21, 2005.

1.3.2. The practical application of the present Law's regulations confirmed the necessity of its further enhancement, in particular, in relation to such issues as tariff formation and settlements for thermal energy consumed, upgrading and development of heating facilities. Apart from that, proper attention shall be given to that fact that the Law provides no enforcement measures (i.e. penalty provisions) to be applied by the regulating authority with respect to license breakers.

#### ***1.4. The Law of Ukraine «On Housing and Communal Services»***

1.4.1. The Law of Ukraine «On Housing and Communal Services» dated June 24, 2004, No. 1876-IV, stipulates fundamentals of organizational and economic relationships arising in the field of provision and consumption of housing and communal services between their producers, executors and consumers, as well as their rights and obligations.

The Law identifies:

- powers of the authorized bodies of executive power and local governments in the field of housing and communal services (including heating services);
- rights and obligations of consumers, executors, producers of the relevant services;
- basic principles of the tariff formation policy in the field of housing and communal services;

- essential conditions of the agreement between the executor/producer of services and consumers of these services;
- issues relating to relations regulation in the field of housing and communal services.

1.4.2. The conducted analysis of regulations of the concerned Law confirms that the Law requires further elaboration with regard to the following:

- differentiation of such concepts as «goods» that is, according to the Law, thermal and electric energy, water, natural gas, etcetera, and «service» that is, by its nature, supply of these goods to consumers;
- clear definition of authorities of all bodies involved in regulation of economic agents' activity in the field of housing and communal services;
- regulation of relations between heating sector players;
- enhancement of the government control system in the housing and communal services sector.

### ***1.5. The Law of Ukraine «On Licensing of Certain Types of Economic Activity»***

1.5.1. The Law «On Licensing of Certain Types of Economic Activity» dated June 1, 2000, No. 1775-III, provides definition of those types of economic activity that are subject to licensing, particularly, it is specified that the following types of economic activity in the field of heat supply are subject to licensing:

- generation of thermal energy;
- transportation of thermal energy by main and local (distribution) heat networks;
- supply of thermal energy.

The detailed licensing procedure is also established by the Law.

1.5.2. It should be noted that the licensing procedure as it is set by the Law of Ukraine «On Licensing of Certain Types of Economic Activity» is of a

simplified nature and can not be applied to natural monopoly market agents acting in the field of heat supply due to specific features of their activity.

Legal control of granting licenses in the heating sector shall be exercised in accordance with the special law governing relationships in this area, namely in accordance with the Law of Ukraine «On Heat Supply».

#### ***1.6. The Law of Ukraine «On Combined Generation of Thermal and Electric Energy (Co-Generation) and Use of Spill Energy»***

The Law of Ukraine «On Combined Generation of Thermal and Electric Energy (Co-Generation) and Use of Spill Energy» dated April 5, 2005, No. 2509-IV, specifies the legal, economic and organizational basis for carrying out activities by market agents in the field of energy efficiency with regard to the use of co-generation facilities, and governs relationships connected with special features of generation, transmission and supply of electric and thermal energy produced by co-generation facilities.

As defined by the Law, **combined generation** of electric and thermal energy (co-generation) is a concurrent generation of electric and thermal energy under one technological process resulting from fuel incineration.

In accordance with the present Law, a **co-generation facility** is a group of equipment that operates based on the combined heat and electricity generation method or converts spill energy of technological processes into electric and thermal energy (co-generation).

A cogeneration facility is subject to qualification, i.e. the central body of executive power in the field of energy efficiency shall establish correspondence of its operational conditions and indices to the applicable requirements (qualification indices) of the present Law.

As per the Law, public regulation in the field of application of co-generation facilities is carried out by:

- the National Electricity Regulatory Commission of Ukraine by means of licensing, setting tariffs for heat and electricity;
- the central body of executive power in the field of energy efficiency by means of conducting of qualification of co-generation facilities;
- other authorities by means of granting permits for installation or construction of co-generation facilities on the basis of existing power plants, as well as by exercising supervision and control over safety performance of works related to construction or rehabilitation of co-generation facilities.

Co-generation facilities providing a part or a whole of its electricity produced to end-users except for service needs, can be classified as qualified on condition they meet the qualification indices.

Qualification of co-generation facilities is carried out by the central body of executive power in the field of energy efficiency according to the procedure established by the Cabinet of Ministers of Ukraine.

### ***1.7. Authorities of Bodies of Executive Power and Local Governments in Relation to Regulation of Activity Performed by Heat Supply Agents as Provided by Law of Ukraine***

Authorities of the central body of executive power in the field of heat supply, that is the National Electricity Regulatory Commission of Ukraine, other bodies of executive power, and local governments in the field of heat supply are specified by the following Laws of Ukraine: «On Natural Monopolies» dated 20 April 2000, No. 1682-III; «On Housing and Communal Services» dated 24 June 2004, No. 1876-IV; «On Heat Supply» dated 2 June 2000, No. 2633-IV; «On Licensing of Certain Types of Economic Activity» dated 1 June 2000, No. 1775-III; «On Local Government in Ukraine» dated 21 May 1997, No. 280/97-VR; «On Local State Administrations» dated 9 April 1999, No. 586-XIV.

As per the Law of Ukraine «On Natural Monopolies», regulation of activity of economic agents of the natural monopoly market and neighbouring markets is

carried out by national natural monopoly regulatory commissions and, if provided by the Law, by executive authorities and local governments.

At present, the energy sector is administered by only one national natural monopoly regulatory commission that is the National Electricity Regulatory Commission of Ukraine exercising control over the activity of natural monopoly market players in the field of electricity and in the oil and gas industry; also, the National Electricity Regulatory Commission of Ukraine is empowered to perform regulation in the heating area on condition that the thermal energy is generated by combined heat and power plants, co-generation installations or non-conventional or renewable energy facilities.

In accordance with Law of Ukraine «On Natural Monopolies» the commissions:

- develop and approve special terms and rules for carrying out entrepreneurial activities by natural monopoly market agents and also neighbouring market agents, exercise control over law observance, take adequate measures to prevent any offence of the above terms and rules;
- grant licenses for conducting entrepreneurial activities to economic agents of natural monopoly markets and neighbouring markets in accordance with the established procedure;
- adopt a pricing policy for the relevant areas of natural monopolies, set conditions of consumer access to goods produced by natural monopoly market agents;
- submit to the relevant public authorities proposals on execution of public contracts, development of standards and quality indices, as well as proposals on regulation of investment processes in the areas of natural monopolies;
- make and maintain registers of natural monopoly market agents, operation of which is regulated in accordance with this Law;
- contribute to the development of and provide based on the established procedure proposals relating to enhancement of the natural monopolies legislation;

- keep the community informed of their activity and activities carried out by natural monopoly market agents by means of mass media;
- propagate annual progress reports reviewing own activities and also activities carried out by natural monopoly market agents;
- submit to the relevant public authorities materials regarding breaches of the current law;
- perform other functions implied as a result of the tasks entrusted.

The Law provides for the following jurisdictions of the commissions:

- obtain documentation, statistical, etc. information on the activity of natural monopoly market agents required to effect the assigned functions;
- make decisions mandatory for implementation by natural monopoly market agents, within the limits of their authorities and according to the procedures established by the relevant commission regulations;
- make decisions on imposition of penalties on natural monopoly market agents in cases as provided by this Law;
- draw up reports on violations by natural monopoly agent's officials of the natural monopoly legislation in accordance with the Administrative Offence Code of Ukraine;
- impose sanctions as it is established by the law on natural monopoly market players and economic agents acting in neighboring markets in the case of violations of the terms and rules of performing of entrepreneurial activities in the field of natural monopolies and in the neighbouring markets (licensing conditions);
- adopt regulations and exercise control over their adherence with regard to those issues which are within the commission's jurisdiction;
- set, in accordance with the established procedures, the entrepreneurial activity requirements for natural monopoly market agents on conditions that this activity may have impact on the market in a state of natural monopoly;

- apply to a court with the relevant statements of claim in the case of violation of regulations of the present Law by natural monopoly market agents and by economic agents acting in the neighbouring markets.

In accordance with the Law of Ukraine «On Housing and Communal Services», the authorities of the central body of executive power in the field of municipal housing economy (including heating issues) are as follows:

- to develop proposals on formation of the national policy in the area of housing and communal services;

- to organize, within the frames of its powers, development and implementation of the national and regional programs in the housing and communal services area;

- to develop science-based cost and loss rates charges for resources used in the process of production, transportation and supply of housing and communal services;

- to develop, within the frames of its powers, the system of rules and regulations relating to the municipal housing services price/tariff formation, standards, norms, regulations, rules and procedures in the field of housing and communal services, as well as those in relation to operation and maintenance, overhauls and routine repairs, rehabilitation of housing stock objects;

- to ensure control over the observance by executors/producers of the relevant requirements to standards, regulations, norms, rules and procedures, and to issue improvement notices aimed at eliminating the revealed violations as it is provided by the law;

- to develop model agreements;

- to co-ordinate the activity of local bodies of executive power and local governments in the field of housing and communal services;

- to organize and execute, within the frames of its authorities, of works relating to standardization, metrology and verification in the field of housing and communal services;

- to grant licenses for certain types of economic activity in the field of municipal housing services as provided by the law;
- to carry out monitoring of the state of settlements for housing and communal services;
- to provide normative and legal support to local state administrations in order to enable them exercise control over the prices/tariffs for housing and communal services;
- to review other issues in the field of municipal housing services in accordance with the law.

As per the law of Ukraine «On Heat Supply», authorities of the central body of executive power in the field of heat supply as related to regulation of activities of heat suppliers (except for the systems operated as combined heat and power plants, thermal power plants, nuclear power plants, other regeneration installations as well as non-conventional and renewable power facilities) are as follows:

- to develop procedures of formation of heat production tariffs and the heat transportation and supply fee;
- to ensure unified tariff policy in the field of heat supply;
- to exercise general supervision over the licensing terms adherence; to review cases relating to breaches of licensing terms with the relevant decision making based on findings of the case review within the limits of their authority;
- to protect customers;
- to raise public awareness with regard to its activity, to conduct publishing activities in the field of heat supply as established by the relevant law provisions.

The same Law provides definition of authorities of the National Electricity Regulatory Commission of Ukraine in the field of heat supply:

- to contribute to creation of competitive environment in this area;
- to regulate tariffs for thermal energy produced at CHPPs, TPPs, NPPs, co-generation installations and facilities with the use of non-conventional or renewable energy sources;

- to carry out licensing of certain types of economic activity in the field of heat supply if thermal energy is produced by CHPs, cogeneration installations and non-conventional or renewable energy sources facilities;
- to exercise control over the licensing terms observance within the limits of its authorities;
- to review cases connected with breaches of licensing terms and to make adequate decisions within the limits of its authorities.

Jurisdiction of municipal administrations and local governments in relation to exercising control over the activity of economic agents in the field of heat supply is determined in quite a number of laws.

As provided by the Law of Ukraine “On Natural Monopolies”, in the statutory cases regulation of activity of the natural monopoly market agents can be carried out by executive authorities and local governments.

If activities of natural monopoly market agents that are subject to regulation in accordance with this Law are focused on satisfaction of demand of a certain region, the regulating functions specified by this Law may be delegated in accordance with the established procedures to the Council of Ministers of the Autonomous Republic of Crimea, regional state administrations, Kyiv and Sevastopol municipal state administrations, which are thereto granted with the relevant authorities as provided to the regulating body by this Law.

Pursuant to the Law of Ukraine “On Housing and Communal Services”, the authorities of the Council of Ministers of the Autonomous Republic of Crimea, regional state administrations, Kyiv and Sevastopol municipal state administrations in the field of municipal housing services are as follows:

- to ensure law observance in the concerned area;
- to develop and implement regional and local programs, to contribute to the development and implementation of national programs in this sphere;
- to perform licensing of certain types of economic activity as it is provided by the law;

- to cooperate with local governments on issues relating to providing of housing and communal services and regulating of prices/tariffs within the limits of their authorities;
- to attract non-budgetary sources of funds in order to ensure fulfillment of national and regional programs in the field of housing and communal services;
- to exercise control over prices and tariffs for housing and communal services and monitoring of the state of the related settlements;
- to make decisions on any other related issues in the field of housing and communal services in accordance with the applicable laws.

The present Law specifies the following authorities of local self-government institutions in the field of housing and communal services:

- providing approvals to and implementing of local programs in the field of housing and communal services, contributing to the development and implementation of the relevant national and regional programs;
- setting of prices/tariffs for housing and communal services in accordance with the Law;
- setting of consumption and quality rates for housing and communal services, exercising control over their observance;
- appointing of the executor of housing and communal services as provided by this Law in accordance with the procedure approved by the central body of executive power in the field of housing and communal economy;
- managing of facilities in the field of housing and communal services owned by the relevant territorial communities, ensuring their due maintenance and effective exploitation;
- providing of housing and communal services of the adequate level and quality to residential consumers;
- establishing of suitable for residential consumers operating conditions of producers and executors;

- ensuring information awareness of residential consumers, as prescribed by the law, of the implementation of local programs in the field of housing and communal economy, as well as with regard to the correspondence of the housing and communal services quality to applicable norms, rates, standards and regulations;
- contracting enterprises of different ownership types on the subject of production and/or execution of housing and communal services;
- executing control over the observance of law governing protection of consumers in the field of housing and communal services;
- monitoring of fulfillment of local municipal housing development programs;
- resolving other issues in the field of housing and communal services in accordance with the applicable law.

As defined by the Law of Ukraine «On Local Self-Government in Ukraine», authorities of executive bodies of village, town and city councils include setting of tariffs for housing and communal services provided by enterprises and organizations of communal property of the relevant territorial community, and receiving endorsement of these issues from enterprises, institutions and organizations not belonging to the communal property.

The Law of Ukraine «On Local State Administrations» specifies regulation of prices and tariffs for provision of housing and communal services to be the authority of local states administrations.

The analysis of applicable regulations of the above mentioned laws with regard to the authorities of central bodies of executive power, local authorities and local governments shows that they are not clearly defined and do not always agree with each other, thus requiring further elaboration.

## **II. Proposals**

The conducted legislation analysis in the field of heat supply indicated that a number of laws require further improvements, namely:

1) In the law of Ukraine “On Heat Supply” regulations governing tariff formation issues, settlements for thermal energy consumed, update and development of heating facilities shall be further elaborated. In addition, the reviewed Law shall provide for authority punishments (punitive measures) to be imposed by the regulatory body to license provisions breakers, as well as special features of the licensing procedure for natural monopoly market agents acting in the field of heat supply.

2) The Law of Ukraine “On Housing and Communal Services” requires further enhancement with regard to the following:

- differentiation of such concepts as «goods» that is in accordance with the Law thermal and electric energy, water, natural gas, etc., and «services» that is inherently the supply of these goods to consumers;
- clarification of powers of all authorities involved in the regulation of activity carried out by economic agents in the field of housing and communal services;
- settlement of relations between agents acting in the field of housing and communal services;
- improvement of the public regulation system in the field of housing and communal services.

3) The Law of Ukraine “On Licensing of Certain Types of Economic Activity” is required to be supplemented with a regulation to provide for a possibility to identify special features of licensing of heating activities in a special law governing the related issues.

4) The Law of Ukraine “On Local Self-Government in Ukraine” and the Law of Ukraine “On Local State Administrations” are subject to further clarifications with regard to powers of local state administrations and local

governments, in particular, setting of heating tariffs and licensing of activity of economic agents in the concerned field.

For example, the authorities of local state administrations are subject to further clarification because based on other applicable rules and regulations the local state administrations grant licenses for heat supply activities, while regulation of prices and tariffs in this field shall be carried out by local institutions of self-government.

Also, the authorities of local councils are subject to further clarification because regulation of prices and tariffs in the field of heat supply shall be performed regardless of the property form of heating facilities.

**A brief legal analysis of the Laws of Ukraine in the sphere of municipal heat energy efficiency and energy savings in Ukraine that are currently in place and the drafts of Laws of Ukraine in this sphere**

**Table 1. The Laws of Ukraine aimed at regulation of the relations in the sphere of heat energy savings**

No	The name of the Law of Ukraine	The date of adoption of the Law and the number	The purview of the Law	The Consultant's remarks regarding the necessity of the Law improvement	The actions for the improvement of the Law
1)	<b>The Code of Ukraine on Administrative Violations</b>	07.12.84 p., No <a href="#">8074-10</a>	The Code includes the Chapter 8, which stipulates the administrative liability for the administrative violations in the industry, the building sector and in the sphere of power and energy sources usage. E.g. the Clause 98 of the Code "Waste usage of power and energy sources" stipulates the administrative penalties for the non-compliance with the normative and project documentation regarding heat insulation of buildings,	The institute of the administrative liability in the sphere of energy savings needs to be improved as in the part of the stipulation of the administrative penalties for the new violations in this sphere as in the part of the aggravation for the defined violations.	The regulation of these issues is provided by the development of the drafts of the amendments and alterations to the Code of Ukraine on administrative violations connected with the development of the drafts of the laws regulated the relations in the sphere of energy savings and energy efficiency of the heat sector. In particular, the provisions regarding the amendments to the Code are included into the final provisions of the drafts of the Laws of Ukraine "On energy efficiency of buildings", "On Housing and Communal Services" that are under consideration by the Verhovna Rada of Ukraine. The final regulation of these issues can be provided after the reforming of the legislation in the sphere of energy

			<p>engineer objects and entrances of the dwellings with results of the reduction of the building envelope, doors and windows heat resistance during the heat season. The Clause 103-1 defines the administrative liability for the unauthorized usage with self-interested goal of electricity and heat without meters (if meters are obliged) or as a result of intentional damage of meters or by any other method, and other violations of the rules for electricity and power usage, and intentional usage with self-interested goal of gas, violations of the rules for gas usage in everyday life, without extensive damage.</p>		savings and energy efficiency.
2)	<b>On Heat Supply</b>	02.06.2005 p.,	This law regulates the	The Law needs to be	The drafts of the Laws of Ukraine

		No 2633-IV	issues of the relations connected with production, transportation, supply and usage of heat.	improved in the part of the specification of the state bodies and municipalities' responsibilities, the stimulation of the objects of heating modernization and reconstruction in order to increase of their energy efficiency.	on amendments to the Law of Ukraine "On Heating" No2336 from 07.04.2008 and No4008 from 04.02.2009 are under consideration in the Verhovna Rada of Ukraine. Nevertheless, there is no complex regulation of defined problems in these drafts of the laws. Therefore, it is important to develop the amendments and alterations to the Law of Ukraine "On Heating" in order to regulate defined issues.
3)	<b>On Housing and Communal Services</b>	24.06.2004 p., No1876-IV	The Law defines the main framework of the organizational and economy relations arisen in the sphere of housing and communal services provision and consumption, the state bodies and municipalities responsibilities, the subjects of the relations rights and obligations, the substantial conditions of the contract between providers and consumers of services. According to the	The Law needs to be improved in the part of the implementation of the concrete mechanisms of the encourage of energy efficiency and energy savings in the sphere of housing and communal services, in particular, in the sphere of heating and hot water supply.	The draft of the Law of Ukraine "On changes to the Law of Ukraine "On Housing and Communal Services" No4686 from 23/06/2009 developed by the Ministry for Housing and Communal Economy of Ukraine and presented by the Government of Ukraine is registered in Verhovna Rada of Ukraine. The new reduction of the Law is proposed by this draft. The draft of this Law aims at the regulation of defined problems. It is important to provide consulting support of the process of the consideration of this draft of the Law by the committees of the Verhovna Rada.

			Clause 3 of this Law encourage of the rational usage of current sources is the one of the main principles of the state policy in the sphere of housing and communal services.		
4)	<b>On Electricity</b>	16.10.1997 p., No575/97-BP	The Law defines the legal, economic and organizational framework of the activity in the sphere of electricity and regulates the relations connected with the production, transmission, supply and usage of energy, encourage of the energy safety of Ukraine, competition and consumers and employees of the industry rights protection. The defined provisions of this Law devoted to the energy savings issues, i. e. co-generation.		

5)	<b>On Energy Savings</b>	01.07.1994 p., No74/94-BP	The Law defines the legal, economic, social and ecological framework of energy savings for the all enterprises, associations and organizations placed on the territory of Ukraine and for the citizens.	The majority of the provisions of this Law are reference rules. The Law needs to be improved in order to define the concrete organizational and legal mechanisms of energy savings in Ukraine.	The draft of the Law “On efficient usage of fuel and energy sources” No4361 from 14.04.2009 developed by the National Agency for efficient usage of energy sources is under consideration by the Verhovna Rada of Ukraine. It is planned that this draft of the Law will replace the current Law of Ukraine “On energy savings”. Considering that the draft law should become the basic legal act in the sphere of energy savings, the exact organizationally-legal mechanisms in the sphere of energy savings need to be included into this draft of the Law.
6)	<b>On Combined Heat and Power Production (Cogeneration) and Utilization of Dump Energy Potential</b>	05.04.2005 p., No2509-IV	The Law defines the legal, economic and organizational framework of the relations in the sphere of the cogeneration plants usage, regulates the issues connected with the peculiarities of the electricity and heat from cogeneration plants production, transmission and	This Law needs to be improved in the part of the adaptation to the EU Legislation, with consideration of the EU Member States experience in the sphere of cogeneration, and with consideration of the practice of the implementation of this Law provisions in Ukraine.	It is necessary to analyze the EU requirements; the EU Member States experience in this sphere and develop the draft of the Law on changes to defined Law.

			supply.		
7)	<b>On Alternative Energy Sources</b>	20.02.2004 p., No555-IV	The Law defines the legal, economic, ecological and organizational framework of alternative energy sources usage and support to the expansion of its usage in the fuel and energy complex.	This Law needs to be improved in the part of its adaptation to the EU legislation, with consideration of the EU Member States experience, and development of effective organizationally-legal and financially-legal mechanisms of stimulation of alternative energy sources usage.	It is necessary to analyze the EU requirements; the EU Member States experience in this sphere and develop the draft of the Law on changes to defined Law.
8)	<b>On Alternative Types of Fuel</b>	14.01.2000 p., No1391-XIV	The Law defines the legal, social, economic, ecological and organizational framework for the production (extraction) and consumption of alternative types of fuel.	The Law needs to be improved in the part of adaptation to the EU legislation, with consideration of the EU Member States experience and financially-legal mechanisms of the stimulation of the alternative types of fuel production (extraction) and usage.	It is necessary to analyze the EU requirements; the EU Member States experience in this sphere and develop the draft of the Law on changes to defined Law.
9)	<b>On Income Taxation of Enterprises</b>	22.05.97 p., No283/97-BP	This Law includes tax incentives for taxation of income connected with usage of energy	The tax incentive mechanisms for energy savings need to be improved.	It is necessary to develop the draft of changes to defined Law of Ukraine aimed at the improvement of the tax incentives of energy savings on the

			efficiency technologies and equipment.		basis of the EU experience.
10	<b>On Value Added Tax</b>	03.04.1997 p., No168/97-BP	This Law includes tax incentives for the operations connected with usage of energy efficiency technologies and equipment.	The tax incentive mechanisms for energy savings need to be improved.	It is necessary to develop the draft of changes to defined Law of Ukraine aimed at the improvement of the tax incentives of energy savings on the basis of the EU experience.
11	<b>On Local Self-Government in Ukraine</b>	21.05.1997 p., No280/97-BP	The Law defines the responsibilities of the local government i.e. in the sphere of housing and communal services, municipal heating and energy savings.	The Law needs to be improved in the part of the concretization of the responsibilities in the sphere of energy savings in municipal heating.	These issues are regulated partially in the final provisions of the drafts of the Laws of Ukraine “On energy efficiency of buildings”, “On housing and communal services”. It is necessary to analyze the provisions of defined drafts of the Laws and the provisions of other drafts of the Laws aimed at the regulations of the relations in the sphere of the municipal heating in order to harmonize them.
12	<b>On Local State Administrations of Ukraine</b>	9.04.1999 p., No586-XIV	The law stipulates the responsibility of local state administrations i.e. in the sphere of Housing and Communal economy and local heating.	The Law needs to be improved in the part of the concretization of the responsibilities in the sphere of energy savings in municipal heating.	These issues are regulated partially in the final provisions of the drafts of the Laws of Ukraine “On energy efficiency of buildings”, “On housing and communal services”. It is necessary to analyze the provisions of defined drafts of the Laws and the provisions of other drafts of the Laws

					aimed at the regulations of the relations in the sphere of the municipal heating in order to harmonize them.
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**Table 2. The drafts of the Laws of Ukraine aimed at the regulation of the relations in the sphere of energy savings**

No	The name of the draft of the Law	The registration number, date of presentation to the Verhovna Rada	The subject of legislative initiative	The main Committee	The main developer	The subject of regulation	The Consultant's remarks regarding the necessity of the draft of the Law improvement
1.	<b>On Efficient Usage of Fuel and Energy Sources</b>	4361, 14.04.2009	Government	Committee in issues of fuel and energy complex, nuclear policy and nuclear safety (Martynenko M. – the head of the Committee)	National energy for efficient usage of energy sources	This draft of the Law stipulates that this Law regulates the relations connected with the usage of fuel and energy sources by enterprises, organizations of all forms of ownership, and by people, and aims at encourage of their efficient usage. It is planned that this draft of the Law will replace the Law of Ukraine “On energy savings”.	Considering that the draft law should become the basic legal act in the sphere of energy savings, the exact organizationally-legal mechanisms in the sphere of energy savings need to be included into this draft of the Law.
2.	<b>On Energy Efficiency of Buildings</b>	4457, 12.05.2009	Government	Committee in issues of building, urban planning and housing and	Ministry for housing and communal economy	The draft of the Law was developed on the basis of the main requirements of the EU Directive 2002/01/EC On energy performance of buildings. This draft of the Law defines the legal, economical and	The draft of the Law needs to be improved in the part of the definition of the experts in energy efficiency of buildings issues, authorized to conduct energy audit/energy efficiency assessment

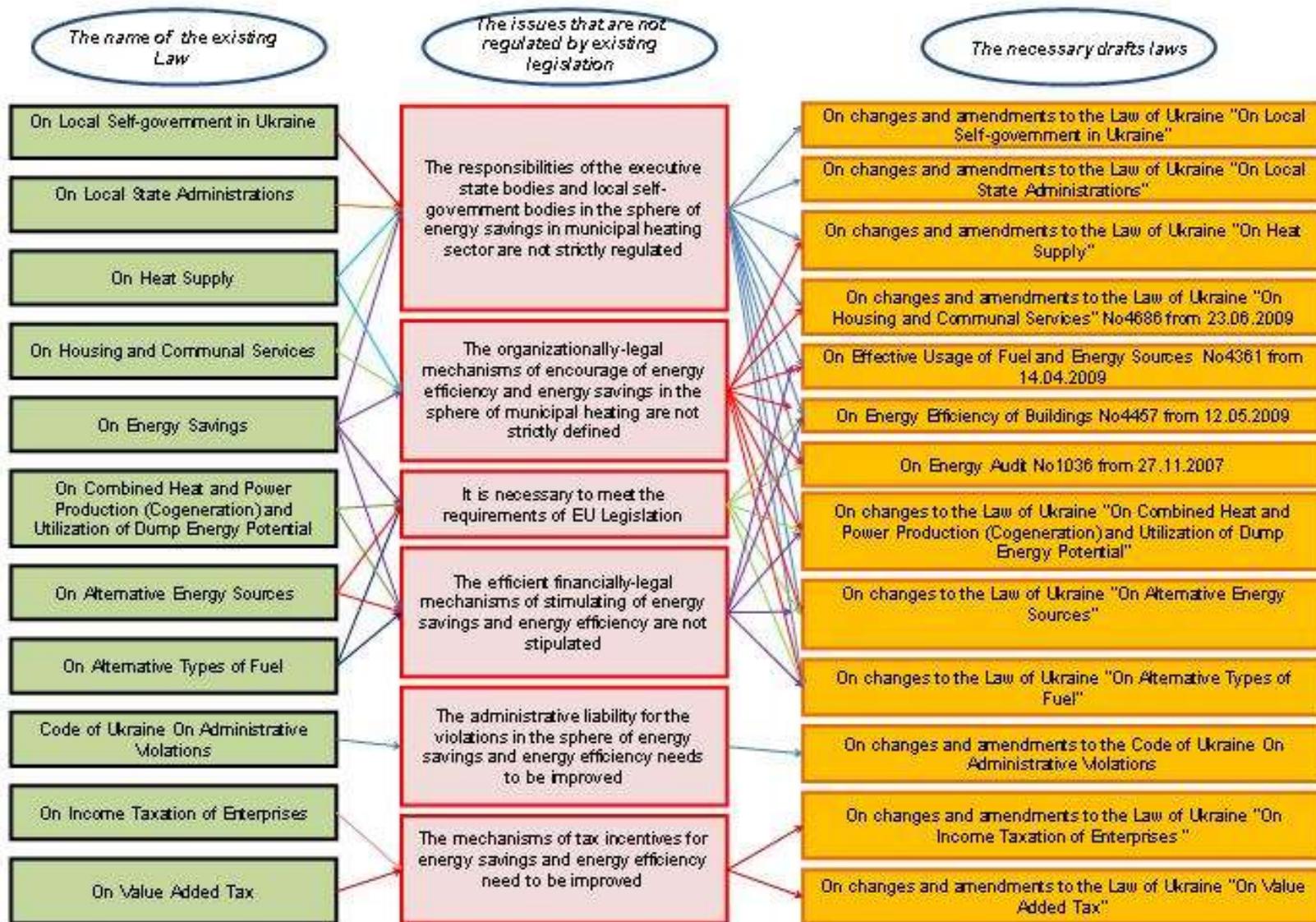
				communal economy and regional policy (Rybak V. – the head of the committee)		organizational framework of energy efficiency in residential and office buildings (in particular, buildings of the state bodies and local authorities) and public sphere buildings.	of buildings and energy certification of buildings.
3.	<b>On Energy Audit</b>	1036, 27.11.2007	People's deputy Pashynsky	Committee in issues of fuel and energy complex, nuclear policy and nuclear safety (Martynenko M. – the head of the Committee)	People's deputy Pashynsky	This draft of the Law of Ukraine defines the legal framework for the energy audit conduction, mutual rights, obligations and responsibility of the customers and executives of energy audit, the regulatory impact of the state in order to encourage of civilized transparent relations in this sphere.	This draft of the Law needs to be improved in the part of the definition of the organizationally-legal framework of energy audit, in particular regarding the requirements for the experts in issues of energy audit on the basis of the consideration of the requirements of the EU and progressive practice of the Member States of the EU, and in the part of the fulfillment of the drafting law procedure requirements.
4.	<b>On Changes to the Law of Ukraine “On Value Added Tax” regarding the special regime of</b>	3544, 24.12.2008	People's deputies Azarov, Rybak, Popov	Committee in issues of tax and customs policy (Teryohin S. – the	People's deputies Azarov, Rybak, Popov	This draft of the Law stipulates the implementation of the special regime of taxation for the housing and communal services and/or heat supply activity. According to this regime the sum of the tax is not paid to the budget. The tax	This draft of the Law needs to be improved in the part of the proposed mechanisms and the structure of a special law in issues of taxation.

	<b>taxation for the housing and communal services and/or heat supply activity</b>			head of the committee)		payer can use this money only for the purchase of capital assets, improvement, purchase (production) of the main communally-owned (or state-owned) fixed assets, and implementation of energy savings technologies.	
5.	<b>On National Energy Regulation Commission</b>	1372, 18.01.2008	People's deputy Martynenko	Committee in issues of fuel and energy complex, nuclear policy and nuclear safety (Martynenko M. – the head of the Committee)	People's deputy Martynenko	The development of this draft of the Law aims to define on the highest level of the legislation of the NERC as national regulator. This draft of the Law defines the legal status of the NERC. Special provisions of this draft of the Law deal with the authorities of the NERC in the sphere of heating.	This draft of the Law needs to be improved with consideration of the EU legislation requirements and the EU Member States experience of its implementation.
6.	<b>On State Regulation in Energy Sector of Ukraine</b>	0889, 23.11.2007	People's deputies Bronnikov, Kluev, Martynenko, Tulub	Committee in issues of fuel and energy complex, nuclear policy and nuclear safety	People's deputies Bronnikov, Kluev, Martynenko, Tulub	The draft of the Law was developed in order to define the legal framework for the state regulation in energy sector and activity of the defined state body. According to this draft of the Law the National energy regulation commission of Ukraine is the national regulator in energy	This draft of the Law needs to be improved with consideration of the EU legislation requirements and the EU Member States experience of its implementation.

				(Martynenko M. – the head of the Committee)		sector of Ukraine. Special provisions of this draft of the Law are connected with the legal regulation in the heating sector.	
7.	<b>On Peculiarities of the State Support of the Realization of the Energy Savings Measures in Budget Organizations</b>	1411, 23.01.2008	People's deputy Konovaluk	Committee in issues of fuel and energy complex, nuclear policy and nuclear safety (Martynenko M. – the head of the Committee)	People's deputy Konovaluk	This draft of the Law aims at the improvement of the legislation in issues of energy savings in the part of the activization of the energy savings technologies implementation, rational and economy usage of fuel and energy sources by budget organizations, and decreasing in the medium-term prospect of the budget expenditures for the provision of such organizations with energy sources.	It is important to find complex solutions in order to solve the energy efficiency problems in a whole economy not only in the sector of budget organizations.
8.	<b>On Changes to the Laws of Ukraine “On Power and Heat Combined Production (Cogeneration) and Utilization of Dump Energy</b>	3323, 28.10.2008	People's deputy Dubovoy	Committee in issues of fuel and energy complex, nuclear policy and nuclear safety (Martynenko M. – the	People's deputy Dubovoy	This draft of the Law was developed in order to development of power and heat production (cogeneration) and utilization of dump energy potential and improvement of the legal regulation in this sphere. It is proposed to include into the basic Law the provisions regarding the including to the tariff of invest component and	To the opinion of the Senior scientific and expert department of the Verhovna Rada of Ukraine this draft of the Law is very urgent and needs to be approved as the basis with consideration of the proposed remarks and proposals.

	<b>Potential”</b>			head of the Committee)		also to add the provision regarding the modernization of the cogeneration units.	
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Improvement of the Legislation of Ukraine in the sphere of energy savings in municipal heating sector



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**I. The Laws of Ukraine in the sphere of energy efficiency and energy savings:**

**1) *The Law of Ukraine “On Energy Savings” from July, 1, 1994, No74/94-BP***

The Law defines the legal, economic, social and ecological framework for energy savings for all enterprises, associations and organizations, located in Ukraine, and for the citizens.

According to the Clause 3 of this Law the stimulation of the rational usage of the power and energy sources by combined power and heat production (co-generation) is one of the main principles of the state policy in the sphere of energy savings.

According to the Clause 6 of the above mentioned Law the state, regional, local and other task programs should be developed in order to provide the effective and target-oriented state activity regarding the organization and coordination of the actions in the sphere of energy savings.

The State energy savings fund, the enterprises and organizations funds, the State budget of Ukraine, local budgets and other sources are the sources of the of the effective usage of fuel and energy sources actions financing refer to the Clause 12 of this Law.

In accordance with the Clause 9 of the above mentioned Law the government in the sphere of energy savings aims at provision of the national economy and people of Ukraine needs in power, heat and electricity on the basis of the rational usage of energy sources, the decrease in all types of power and energy sources waste, the realization of the state expertise in issues of energy savings functions, the control, the forecasting, the informing and other executive and administrative activities.

This Law is a basic legal act in the sphere of energy savings and it does not stipulate the peculiarities of energy savings in specific spheres (for example, in the sphere of Housing and Communal economy, energy efficiency of buildings etc.).

The Law includes some reference rules (e.g. the Clause 24-1 “Energy audit” defines that the mechanism of energy audit is stipulated by the Law).

This Law needs to be improved in order to become more efficient. It is important to consider the requirements of the EU legislation in the sphere of energy savings and the experience of the EU Member States regarding its implementation.

## ***2) The Code of Ukraine on Administrative Violations***

The Code includes the Chapter 8, which stipulates the administrative liability for the administrative violations in the industry, the building sector and in the sphere of power and energy sources usage. E.g. the Clause 98 of the Code “Waste usage of power and energy sources” stipulates the administrative penalties for the non-compliance with the normative and project documentation regarding heat insulation of buildings, engineer objects and entrances of the dwellings with results of the reduction of the building envelope, doors and windows heat resistance during the heat season. The Clause 103-1 defines the administrative liability for the unauthorized usage with self-interested goal of electricity and heat without meters (if meters are obliged) or as a result of intentional damage of meters or by any other method, and other violations of the rules for electricity and power usage, and intentional usage with self-interested goal of gas, violations of the rules for gas usage in everyday life, without extensive damage.

The institute of the administrative liability in the sphere of energy savings needs to be improved as in the part of the stipulation of the administrative penalties for the new violations in this sphere as in the part of the aggravation for the defined violations.

## ***3) The Law of Ukraine “On Local Self-government in Ukraine” from May 21, 1997, No280/97-BP***

The Law of Ukraine defines i.e. the responsibilities of municipalities in the sphere of Housing and Communal Economy, in particular, in the sphere of energy

savings. E.g. in accordance with the Clause 30 of this Law the executive bodies of the municipalities provide the management of Housing and Communal Economy communally-owned objects, encourage the energy sources for the people.

**4) *The Law of Ukraine “On Local State Administrations of Ukraine” from April, 9, 1999, No586-XIV***

The law stipulates the responsibilities of local state administrations i.e. in the sphere of Housing and Communal economy and local heating. E.g. in accordance with the Clause 18 of this Law the local state administration provides the financing for the actions connected with the housing and communal services development, in joint interests of the local residents joints the budget costs with the costs of the enterprises and organizations and people for the building, the extension, the reconstruction, the repair, the keeping of the heat, water, gas, energy networks, social maintenance of the housing and communal objects, in particular its purchase for the needs of the people, finances the above mentioned actions, regulates prices and tariffs for the providing of the works and housing and communal services of enterprises, and defines and stipulates the norms of its consumption, controls the compliance with them.

**5) *The law of Ukraine “On Housing and Communal Services” from June, 24, 2004, No1875-IV***

The Law stipulates the main framework of organizational, economic relations arising in the sphere of rendering and consumption of housing and communal services between its producers, providers and consumers, and their rights and obligations. The Law defines the main terms, the principles of the state policy in the sphere of housing and communal services, the responsibilities of the state bodies and municipalities in the sphere of housing and communal economy, the rights and obligations of the consumers, providers, producers, the contract conclusion procedure in the sphere of housing and communal services, the main principles of the pricing and payments for housing and communal services. The one of the main principles of the state policy in the sphere of housing and

communal services is encourage of the rational usage of the exact sources and stable development of the communities.

The relations in the sphere of housing and communal services need to be reformed. Therefore the provisions of this Law need to be revised and improved.

**6) *The Law of Ukraine “On Electricity” from October, 16, 1997, No575/97-BP***

This Law defines the legal, economic and organizational framework of the activity in the sphere of electricity and regulates the relations connected with energy production, transmission, supply and usage, energy safety of Ukraine, competition and consumers and industry employees’ rights protection.

In accordance with the Clause 5 of this Law the main principles of the state policy in the sphere of electricity are encourage of the rational usage of fuel and energy, supporting the development of the alternative energy as ecologically clean and fuel less energy industry by stipulating the “green” tariff and payments for the power stations which produce the electricity with usage of alternative energy sources (despite blast-furnace and coke gases, and with usage of hydropower energy – produced by only small hydropower stations), of all produced power in full volume by money, without any types of clearing of debts for electricity.

According to the Clause 15 of this Law the Electricity Wholesale Market of Ukraine is obliged to purchase at the “green” tariff the electricity produced on the objects of electric industry, which use alternative energy sources (despite blast-furnace and coke gases, and with usage of hydropower energy – produced by only small hydropower stations) and has not been sold for the contract prices directly to the consumers or energy supply companies which provide economic activity of energy supply at regulated tariff.

The electricity produced from the alternative energy sources can be sold at “green” tariff by direct contracts with consumers. In that case the energy consumer shall be provided by the Government of Ukraine with the document confirmed the

purchase of the energy produced from the alternative energy sources. The Government of Ukraine shall define the procedure of usage of this document.

The Clause 17-1 of this Law stipulates the incentives for production of electricity from alternative energy sources.

***7) The Law of Ukraine “On Alternative Energy Sources” from February, 20, 2003, No555-IV***

This Law stipulates the legal, economic, ecological and organizational framework for usage of the alternative energy sources and support for expansion of its usage in the fuel and energy complex.

According to the Clause 5 of the Law state regulation in the sphere of alternative energy sources is provided i.e. by stipulating the tariffs for electricity produced on the objects of the alternative energy industry, and of heat produced from alternative sources.

Refer to the Clause 8 of this Law the financing of the actions in the sphere of alternative energy sources is provided by the costs included into the wholesale tariffs on electricity and tariffs on heat, by implementing the special aimed markup to the tariff defined by the law and costs of the enterprises and organizations, costs from the state and local budgets, optional contributions and other costs non prohibited by law.

***8) The Law of Ukraine “On Combined Heat and Power Production (Cogeneration) and Utilization of Dump Energy Potential” from April, 5, 2005, No2509-IV***

This Law defines the legal, economic and organizational framework of the activity of subjects in the sphere of energy savings regarding the usage of cogeneration plants, regulates the relations connected with the peculiarities of the production, transmission and supply of power and heat from the cogeneration plants.

In accordance to the Clause 8 of this Law the National Energy Regulation Commission provides licensing and pricing on power and heat produced by cogeneration plants.

Refer to the Clause 5 of this Law the state policy in the sphere of usage of cogeneration plants is based on the following principles:

- the development and balanced usage of cogeneration plants in national economy;
- the support of the transformation of the acting heat producing objects into cogeneration plants in order to increase the efficiency of fuel usage and ecological safety;
- creation of divided (local) power capacities as a condition for the increasing of reliability and safety of energy supply on regional level;
- state regulation in this sphere;
- economic incentives of usage of cogeneration plants of the enterprises despite forms of ownership and industry reliability;
- encourage of the state control bodies free access to the information on the status of cogeneration plants and the volumes of the power and heat production.

#### **9) *The Law of Ukraine “On Heat Supply” from June, 2, 2005, No2633-IV***

The Law defines the main legal, economic and organizational framework of the activity of the subjects in the sphere of heating and regulates the relations connected with the production, the transportation, the supply and the usage of heat in order to encourage the energy safety of Ukraine, increasing of energy efficiency of heat system functioning, creation and improvement of heat market and consumers and industry employees rights protection.

This law is the special legal act in the sphere of heat.

The law stipulates i.e. the main terms, the peculiarities of the relations in the sphere of heat, the main principles of the state policy in the sphere of heat, the

responsibilities of the state bodies and local authorities in the sphere of heat, the framework for the state regulation in this sphere, the principles of economic activity in the sphere of heat, the liability in case of violations in this sphere.

Refer to the Clause 8 of this Law the state support in the sphere of heat is provided according to the costs defined by the Law on State budget of Ukraine and local budgets on equal year, and the costs on conducting of scientific and research works regarding the improvement of heat systems and energy savings.

**10) *The Law of Ukraine “On Alternative Types of Fuel” from January, 14, 2000, No1391-XIV***

The Law defines the legal, social, economic, ecological and organizational framework for the production (extraction) and consumption of alternative types of fuel, and also stimulating of the increasing of the part of their usage up to 20 per cent of total amount of fuel consumption by 2020 year.

The main principles of state policy in the sphere of alternative types of fuel:

- incentives for the development and rational usage of non-traditional sources and types of energy raw materials for the production (extraction) of alternative types of fuel with the aim of economy of fuel and energy sources and decrease of the dependence of Ukraine from their import;
- step-by-step increasing of normatively-defined part of production and usage of biofuel and mix petrol;
- decrease of negative influence on the environment via usage of different types of waste as raw materials for alternative types of fuel production, compliance with energy safety of alternative types of fuel production (extraction), transportation, saving and consumption;
- support to the development of the scientific and technical base of alternative types of fuel production (extraction), popularization of scientific and technical progress in this sphere;
- support to the entrepreneurship in the sphere of alternative types of fuel on the basis of entrepreneur rights state protection;

- popularization of economic, ecological, social and other advantages of alternative types of fuel production (extraction) among citizens;
- development of international scientific and technical cooperation, wide usage of capacities of world science and technics in the sphere of alternative types of fuel;
- prevention of artificial creation of monopolies in alternative types of fuel market, and in case of acknowledgement according to the law of natural monopolies conduct the control for their activity, prevention of abuse of monopoly status and monopolies restriction.

**11) *The Law of Ukraine “On Income Taxation of Enterprises” from May, 22, 1997, No283/97-BP***

This Law includes tax incentives for taxation of income connected with usage of energy efficiency technologies and equipment.

In particular, according to the point 7.21.1 of the Clause 7 of this Law the income of enterprises earned from the sales on the customs territory of Ukraine of own production goods such as equipment working on non-traditional or renewable energy sources, energy efficiency equipment and materials, goods supported fuel and energy economy and rational usage, fuel and energy meters, control and costs regulation units for fuel and energy sources, equipment for alternative types of fuel production is not taxable income. These costs can be used by the tax payer only for the production increase.

**12) *The Law of Ukraine “On Value Added Tax” from April, 03, 1997, No168/97-BP***

This Law includes tax incentives for the operations connected with usage of energy efficiency technologies and equipment.

In particular, according to the point 5.18.2 of the Clause 5 of this Law the operations of import to the territory of Ukraine of the equipment worked on non-traditional and renewable energy sources, energy saving equipment and materials,

fuel and energy meters, control and costs regulation units for fuel and energy sources, equipment and materials for alternative types of fuel production provided that these goods are used by the tax payer for the purposes of own production and in case identical goods with equivalent quality indicators are not produced in Ukraine are tax-free operations.

## **II. The drafts of the Laws of Ukraine in the sphere of energy savings registered in the Verhovna Rada of Ukraine:**

### ***1) The draft of the Law of Ukraine “On Efficient Usage of Fuel and Energy Sources”***

This draft of the Law stipulates that this Law regulates the relations connected with the usage of fuel and energy sources by enterprises, organizations of all forms of ownership, and by people, and aims at encourage of their efficient usage.

It is planned that this draft of the Law will replace the Law of Ukraine “On energy savings”.

There are the main targets of the special authorized central executive body in issues of the realization of the state policy in the sphere of efficient usage of fuel and energy sources:

- 1) the realization of the single state policy in the sphere of efficient usage of fuel and energy sources and energy savings;
- 2) encourage of decrease of the part of the alternative energy sources in Ukraine;
- 3) creation of the monitoring system for the usage of fuel and energy sources and encourage of the implementation in Ukraine of the single form of reporting regarding the usage of fuel and energy sources;
- 4) encourage of the functioning of the single system of rating of the unit costs of fuel and energy sources in social production;

- 5) organization and implementation of the state expertise of efficient usage of fuel and energy sources;
- 6) organization of obligatory education and providing the evaluation of the officials, who provides the activity in the sphere of the usage of fuel and energy sources;
- 7) development of single system of national standards in the sphere of efficient usage of fuel and energy sources and energy savings;
- 8) implementation of actions of efficient usage of fuel and energy sources with application of market infrastructure (banks, invest funds etc.);
- 9) creation and encourage of the functioning of the budget organizations energy audit system.

***2) Draft of the Law of Ukraine “On Changes to the Law of Ukraine “On Value Added Tax” regarding the special regime of taxation for the housing and communal services and/or heat supply activity” (No3544 from December, 24, 2008), presented by the people’s deputies M.Azarov, V.Rybak, O.Popov.***

This draft of the Law stipulates the implementation of the special regime of taxation for the housing and communal services and/or heat supply activity. According to this regime the sum of the tax is not paid to the budget. The tax payer can use this money only for the purchase of capital assets, improvement, purchase (production) of the main communally-owned (or state-owned) fixed assets, and implementation of energy savings technologies. This draft of the Law needs to be improved in the part of the proposed mechanisms and the structure of a special law in issues of taxation.

***3) Draft of the Law on National Energy Regulation Commission No1372 from January, 18, 2008, presented by the People’s deputy M.Martynenko.***

The development of this draft of the Law aims to define on the highest level of the legislation of the NERC as national regulator. This draft of the Law defines the legal status of the NERC. Special provisions of this draft of the Law deal with the authorities of the NERC in the sphere of heating. The draft of the Law stipulates that the main target of the NERC is the state regulation of the activity of subjects of natural monopolies and adjusted markets in electricity, heating for the subjects of economic activity conducted combined power and heat production and/or used non-traditional energy sources, and on the oil and gas complex. According to this draft of the Law the NERC, in particular, conducts licensing of defined types of economic activity in the oil and gas complex, in the sphere of electricity and heat production (provided that it is produced on the heat and power plant, other cogeneration units and units used non-traditional or renewable energy sources); takes part in formation of the rules for the functioning of the power, heat and gas markets and encourages the equal facilities for consumers and suppliers to these markets.

***4) Draft Law of Ukraine on State Regulation in Energy Sector of Ukraine No0889 from November, 23, 2007, presented by the People deputies of Ukraine V.Bronnikov, A.Kluev, M.Martynenko, S.Tulub.***

This draft of the Law was presented by the People's deputies of the previous convocation and was approved by the Parliament as a basis on February, 07, 2007.

The draft of the Law was developed in order to define the legal framework for the state regulation in energy sector and activity of the defined state body. According to this draft of the Law the National energy regulation commission of Ukraine is the national regulator in energy sector of Ukraine. Special provisions of this draft of the Law are connected with the legal regulation in the heating sector. In particular, the Law stipulates that the local authorities regulate the activity of the subjects in the sphere of heating according to their competence, regulate (establish)

to defined local community in accordance with the procedure and the competence defined by Law, tariffs on heat supplied to the consumers by the communally-owned enterprises and organizations, excluding produced on power and heat plants. The NERC is responsible for the licensing of the economic activity of heat produced on power and heat plants, cogeneration units and units used non-traditional or renewable energy sources, transportation of heat via baseline and local (distributing) networks, heat supply.

***5) Draft of the Law on Energy Audit No1036 from November, 27, 2007, presented by the People's deputy S.Pashynsky. The draft of the Law was developed for the execution of the Law on energy savings requirement (the Clause 24-1).***

This draft of the Law of Ukraine defines the legal framework for the energy audit conduction, mutual rights, obligations and responsibility of the customers and executives of energy audit, the regulatory impact of the state in order to encourage of civilized transparent relations in this sphere.

This draft of the Law needs to be improved on the basis of the consideration of the requirements of the EU and progressive practice of the Member States of the EU.

***6) Draft Law of Ukraine on Peculiarities of the State Support of the Realization of the Energy Savings Measures in Budget Organizations No1411 from January, 23, 2008, presented by the People's deputy V.Konovaluk.***

This draft of the Law aims at the improvement of the legislation in issues of energy savings in the part of the activization of the energy savings technologies implementation, rational and economy usage of fuel and energy sources by budget organizations, and decreasing in the medium-term prospect of the budget expenditures for the provision of such organizations with energy sources.

This draft of the Law stipulates that the state regulation in the sphere of the state support of the energy savings measures in the budget organizations should be provided via:

- development of the list of the priorities of the energy savings for the short-, medium-, and long-term prospect; the development of the energy savings programs and energy consumption modernization capital expenditures plans for the budget organizations should be in accordance with these priorities;
- conducting the state expertise of the energy savings measures planned to realize in the budget organizations upon the energy efficiency contract;
- forming the list of the energy savings measures in the budget organizations, need to use of the mechanism of the third-party financing and conducting of the evaluation of the energy savings measures for the mechanism of the credit price reduction;
- direct financing from the defined budgets of the expenditures for the energy efficiency measures implementation by the budget organizations upon the energy efficiency contract.

***7) Draft of the Law of Ukraine on Changes to the Laws of Ukraine “On Power and Heat Combined Production (Cogeneration) and Utilization of Dump Energy Potential” No3323 from October, 28, 2008, presented by the People deputy Dubovy O.***

This draft of the Law was developed in order to development of power and heat production (cogeneration) and utilization of dump energy potential and improvement of the legal regulation in this sphere.

It is proposed to include into the basic Law the provisions regarding the including to the tariff of invest component and also to add the provision regarding the modernization of the cogeneration units.

***8) Draft of the Law of Ukraine On Energy Efficiency of Buildings  
No4457 from May, 12, 2009, presented by the Government of Ukraine***

The draft of the Law was developed on the basis of the main requirements of the EU Directive 2002/01/EC On energy performance of buildings.

This draft of the Law defines the legal, economical and organizational framework of energy efficiency in residential and office buildings (in particular, buildings of the state bodies and local authorities) and public sphere buildings.

According to the Clause 4 of this draft of Law the main principles of the energy efficiency of buildings state policy are the following:

- encourage of the energy efficiency of buildings in accordance with European standards;
- provision of the proper technical state of buildings and extension of the terms of their utilization;
- the limitation of the CO<sub>2</sub> emissions via energy efficiency of buildings increasing;
- stimulation of the buildings' owners and tenants to rational and economy fuel and energy usage, diversification of the energy supply sources and implementation of the energy saving (energy efficiency) actions;
- the differentiation of the energy savings (energy efficiency) actions financing sources;
- the creation of the conditions for the involving of the national and foreign investments in order to implement of the energy savings (energy efficiency) actions.

This draft of the Law consists of the following seven chapters:

- Chapter I. General provisions;

- Chapter II. The minimum requirements for the energy performance of buildings;
- Chapter III. Energy efficiency assessment, energy audit and energy certification of buildings;
- Chapter IV. Energy savings (energy efficient) actions financing;
- Chapter V. Popularization of the energy saving (energy efficient) actions;
- Chapter VI. The liability for the violations in the sphere of energy efficiency of buildings;
- Chapter VII. Final provisions.

***General conclusions:***

The legal energy saving framework in the field of municipal heating is in place in Ukraine. There are several general and specific laws in this sphere that are currently in force. At the same time, the applicable Ukrainian legislation acting in the concerned area requires further enhancement with regard to the incorporation of the national experience and best international practices.

There are several draft laws aimed at improving of the legal regulations relating to relationships in the sphere of municipal heat energy savings. Differentiation of responsibilities of the state authorities and municipalities, in particular, regarding pricing and licensing of enterprises in the sphere of municipal heat energy savings, legal regulation of separate spheres, in particular, the sphere of energy efficiency of buildings, development of financial mechanisms to promote municipal heat energy savings, etc. are the main objectives of the above mentioned draft laws of Ukraine. The legal solutions proposed by the drafted laws need to be evaluated and improved in line with the current legislation of Ukraine, the practice of its implementation in Ukraine and the relevant foreign experience. Also, the draft laws need to be harmonized with each other and with the current legislation of Ukraine.

The main targets for the enhancement of the Ukrainian legislation in the energy saving field for the municipal heat sector are as follows:

1. The improvement of general (basic) legal acts in the field of municipal heat sector energy savings, and primarily the Laws of Ukraine “On Energy Savings”, “On Heating”, “On Housing and Communal Services”, and, later, the Laws of Ukraine “On power and heat combined production (cogeneration) and utilization of dump energy potential”, “On alternative energy sources”, “On alternative types of fuel”, and of the tax laws of Ukraine (in the first place the Laws of Ukraine “On taxation of the enterprises income”, “On Value Added Tax”) in the part of the tax incentives for energy savings.

2. The development and adoption of special legal acts aimed at implementing of the main targets stated by the basis laws settle relations in the defined spheres, first of all, the laws on energy efficiency of buildings and on energy audit.

3. The intercorrelation of the current laws (first of all, with regard to the distribution of authorities of the state executive bodies and municipalities in the defined sphere by means of amending of the Laws of Ukraine “On Local Self-Government in Ukraine”, “On Housing and Communal Services”, “On Energy Savings”).

**ANALYSIS OF THE UKRAINIAN LEGISLATION RELATED TO LEASE, CONCESSION, CORPORATIZATION  
AND OTHER FORMS OF PUBLIC-PRIVATE PARTNERSHIP**

**Table 1. UKRAINIAN LEGISLATIVE ENHANCEMENTS OF PUBLIC PRIVATE PARTNERSHIP**

Item No	Legislative Enactments of Ukraine	Purview of Enactment	Consultant's Enactment Enhancement	Draft Law Enhancement Measures
1.	<b>Civil Code</b> adopted 16.01.2003, No. 435-IV, became effective on 01.01.2004	The Code settles general issues of lease, transfer of property in trust.	Presently not required.	
2.	<b>Civil Code</b> adopted 16.01.2003, No. 436-IV, became effective on 01.01.2004	The Code settles general issues of lease, concession, creation and operation of enterprises.	Presently not required.	
3.	<b>Law of Ukraine «On Privatization of Public Property»</b> adopted 04.03.1992, No. 2164-XII	The Law prohibits privatization of engineering infrastructures and municipal improvement facilities, including networks, constructions, equipment connected with the supply of water and heat to consumers.	With a reference to this provision of the Law, other regulatory legal acts restrain transfer of these facilities for lease, as well as their corporatization.	
4.	<b>Law of Ukraine «On Lease of Public and Communal Property»</b> adopted 10.04.1992, No. 2269-XII	The Law established mechanisms of transferring the property for lease. The Law prohibits leasing of the property that is not subject to	In order to introduce public-private partnerships in the heating sector it is required to remove bans on lease of	The Draft Law of Ukraine «On Special Features of Transferring for Lease and Concession of Facilities of District Heating, Centralized Water Supply and Sewerage Being of the Communal

		privatization.	facilities in the concerned area.	Ownership» dated 03.04.2008, No. 2320, was submitted for review to the Parliament of Ukraine by parliamentarians V.Rybak, O.Popov. At this stage the review process consultancy support to the Parliament's committees is advisable.
5.	<b>Law of Ukraine «On Concession»</b> adopted 16.07.1999, No. 997-XIV	The Law settles the procedure for transferring of facilities in concession. It is also defined there that communally owned facilities used for provision of heating services to consumers may be subject to concession.	Presently not required.	In 2009 the Law was supplemented with the provisions on special features of transferring in concession of heat supply facilities.
4.	<b>Law of Ukraine «On Lease of Public and Communal Property»</b> adopted 10.04.1992, No. 2269-XII	The Law established mechanisms of transferring the property for lease. The Law prohibits leasing of the property that is not subject to privatization.	In order to introduce public-private partnerships in the heating sector it is required to remove bans on lease of facilities in the concerned area.	The Draft Law of Ukraine «On Special Features of Transferring for Lease and Concession of Facilities of District Heating, Centralized Water Supply and Sewerage Being of the Communal Ownership» dated 03.04.2008, No. 2320, was submitted for review to the Parliament of Ukraine by parliamentarians V.Rybak, O.Popov. At this stage the review process consultancy support to the Parliament's committees is advisable.
5.	<b>Law of Ukraine «On Concession»</b> adopted 16.07.1999,	The Law settles the procedure for transferring of facilities in concession. It is also defined there	Presently not required.	In 2009 the Law was supplemented with the provisions on special features of transferring in concession of heat supply

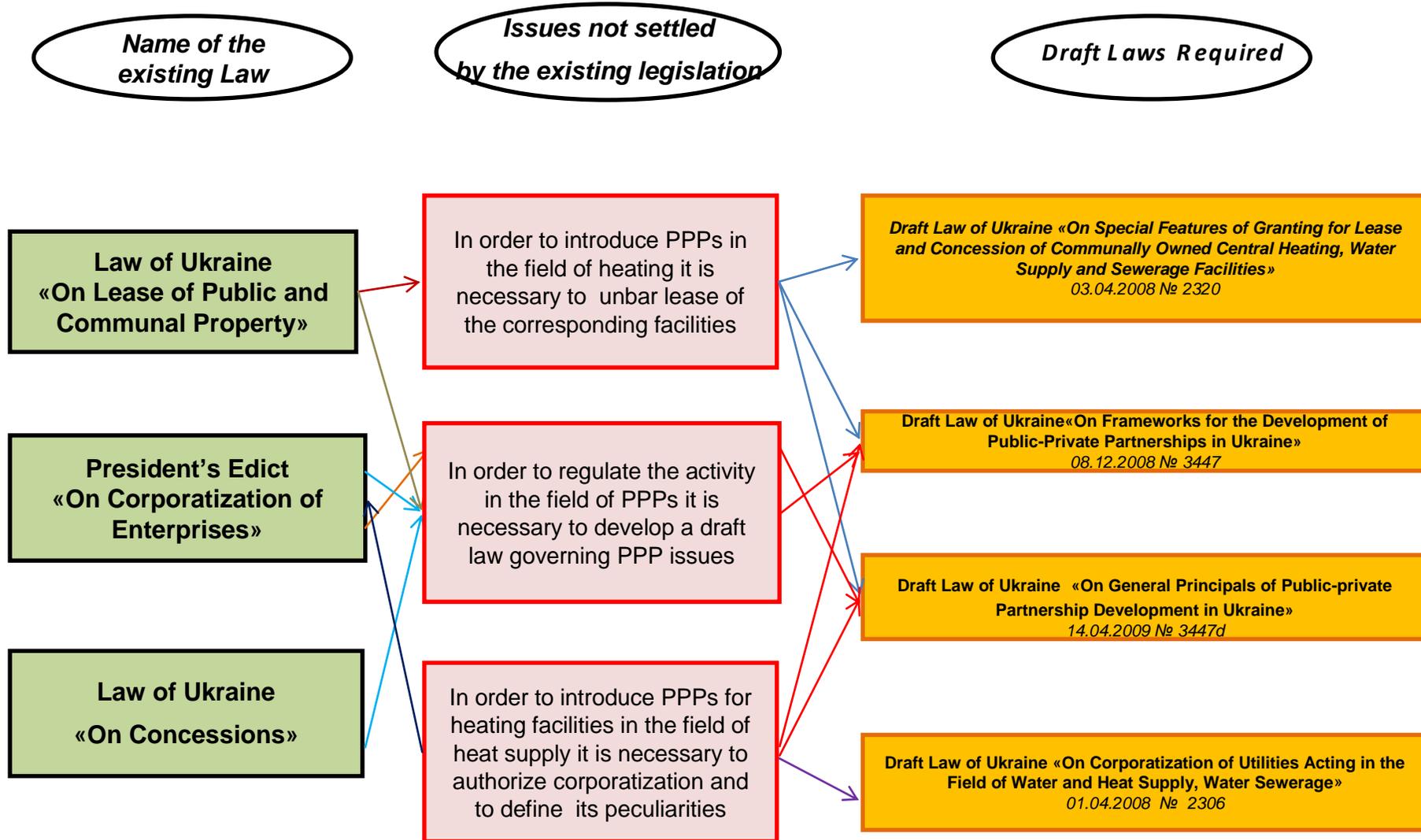
	No. 997-XIV	that communally owned facilities used for provision of heating services to consumers may be subject to concession.		facilities.
6.	<b>Law of Ukraine «On Investment Activity»</b> adopted 18.09.1991, No. 1560-XII	The Law provides for the general legal, economic and social frames of the investment activity in Ukraine.	Presently not required.	
7.	<b>Law of Ukraine «On Foreign Investment Regulations»</b> adopted 19.03.1996, No. 93/96-VR	The Law defines peculiarities of the foreign investment regime, sets warranties as to foreign investment protection, the procedure of operation of undertakings with foreign investments.	Provisions of the Law may be applied when a joint venture in the field of heat supply is established.	
8.	<b>President's Edict «On Corporatization of Enterprises»</b> adopted 15.06.993, No. 210/93	The Edict defines the procedure of corporatization of publicly own enterprises. It is also recommended to apply this Edict for corporatization of communal enterprises.	It is required to authorize corporatization for heating facilities and to determine particular issues associated with its execution.	The Draft Law of Ukraine «On Corporatization of Communal Enterprises Acting in the Field of Heat Supply, Water Supply and Sewerage» dated 01.04.2008, No. 2306, was submitted for review to the Parliament of Ukraine by parliamentarians V.Rybak, O.Popov. At this stage the review process consultancy support to the Parliament's committees is advisable.

**Table 2. Draft Regulatory Legal Enactments of Ukraine on Public-Private Partnerships**

<b>Item No</b>	<b>Draft Regulatory Legal Enactment</b>	<b>Per view of Law</b>	<b>Consultant's Notes</b>	<b>Outcomes of the Review</b>
1.	<b>Draft Law of Ukraine «On General Principals of Public-Private Partnership Development in Ukraine»</b> <i>Registered in the Parliament of Ukraine on 08.12.2008, No. 3447 Cabinet of Ministers of Ukraine</i>	The Draft Law is focused on definition of legal frameworks of public policy in the field of public-private partnership and basic principals of cooperation between the state and the public sector on a contractual basis.		The Draft Law was adopted full and by the Parliament of Ukraine on 25.06.2009.
2.	<b>Draft Law of Ukraine «On General Principals of Public-Private Partnership Development in Ukraine »</b> <i>Registered in the Parliament of Ukraine on 14.04.2009, No. 3447d, by the parliamentarians N.Yu. Korolevska, K.M. Lyapina and others</i>	Submitted as revised draft law of the Cabinet of Ministers of Ukraine.		The revised Draft Law was adopted by the Parliament of Ukraine on 26.06.2009.
3.	<b>Draft Law of Ukraine «On Corporatization of Communal Enterprises Acting in the Field of Heat Supply, Water Supply and Sewerage»</b> <i>Registered in the Parliament of Ukraine on 01.04.2008, No. 2306, by the parliamentarians V.V. Rybak</i>	The Draft Law is focused on the procedure of corporatization of communal enterprises acting in the field of heat supply, water supply and sewerage.	Due to the face that the Law of Ukraine «On Privatization» prohibits privatization of the concerned facilities, and corporatization is the first step of the privatization procedure, it is necessary to introduce changes to the aforesaid Law.	Submitted for review to the Parliament of Ukraine. Steering Committee – the Committee on Constructions, Municipal Development, Housing and Communal Services, and Regional Policy headed by V.V. Rybak.

	<i>and O.P. Popov</i>			
4.	<p><b>Draft Law of Ukraine «On Special Features of Transfer in Lease and Concession of District Heating, Centralized Water Supply and Sewerage Facilities Being of the Communal Ownership»</b></p> <p><i>Registered in the Parliament of Ukraine on 03.04.2008, No. 2320, by the parliamentarians V.V. Rybak and O.P. Popov</i></p>	<p>The Draft Law is focused on special features of transferring in lease and concession of district heating, water supply and sewerage facilities being of the communal property, as well as particularities of conducting leasing and concession of such facilities.</p>	<p>As per the Law of Ukraine «On Lease of Public and Communal Property», publicly owned facilities that are not subject to privatization may not be taken for lease. The above Law requires the related introduction of changes.</p>	<p>Submitted for review to the Parliament of Ukraine.</p>
5.	<p><b>Draft Concept for the Development of Public-Private Partnership in the Municipal Housing Sector</b></p> <p><i>Ministry for Housing and Communal Services</i></p>	<p>The Concept is aimed at implementing PPPs in the municipal housing sector, developing new models and mechanisms for involvement of the private sector to the housing and communal services.</p>	<p>The adopted Concept will promote wider application of PPP forms in the municipal housing sector.</p>	<p>Submitted for review to the Cabinet of Ministers of Ukraine.</p>

## ENHANCEMENT OF PPP LEGISLATION IN UKRAINE



## 1. BASIC FORMS OF PUBLIC-PRIVATE PARTNERSHIP (PPP) IN UKRAINE

The basic forms of Public-Private Partnership in Ukraine are as follows: lease, concession, management, creation of joint ventures, corporatization.

### *Lease*

Lease issues are governed by the Civil and Commercial Codes of Ukraine, and the Law of Ukraine «On Lease of Public and Communal Property» dated April 10, 1992, No. 2269-XII.

The Civil Code of Ukraine covers the general issues of renting (leasing) of any property, while the Commercial Code of Ukraine reviews leasing of assets for the purpose of carrying out of the economic activity, and the Law of Ukraine «On Lease of Public and Communal Property» gives detailed consideration of leasing of public and communal property, sets mechanisms for its realization.

**Lease**, in accordance with the Law of Ukraine «On Lease of Public and Communal Property», is a contractual agreement for a fixed-term paid use of assets necessary for the leaseholder to carry out its entrepreneurial and other types of activity.

Assignment of assets for lease entails no ownership change, i.e. in such a case the concerned assets will remain the community property.

Special features of lease as a form of tenancy are as follows:

- leasehold relations are governed exceptionally on a contractual basis and may not arise from any other occasions;
- lease terms provide for a transfer of assets for use, and no disposal right is given to a leaseholder with regard to the leased assets;
- use of leased assets is paid and covered by rental payments in the amount and for a period predefined;
- assets are transferred for temporary use and are subject to return to its owner on completion of the lease period;

- the property transferred for a lease may be used by a leaseholder for carrying out of entrepreneurial activities only.

Lessors of the public and communal assets are as follows:

- the State Property Fund of Ukraine and its regional branches with regard to integral property complexes of enterprises, their structural units and immovable assets being of the public ownership, as well as any other property as it is stipulated by the law;

- other bodies duly authorized by the Parliament of the Autonomous Republic of Crimea or by local councils to provide management of the assets, with regard to such property that is owned by the Autonomous Republic of Crimea or belongs to the communal property respectively;

- public (communal) enterprises with regard to certain assets set on a case-by-case basis and also, subject to the proper authorization of the lessors, integral property complexes, their structural units and immovable assets.

Leaseholders may be associations established by its employees, members of its structural unit, other legal entities and citizens of Ukraine, persons and legal entities of foreign states, international organizations and stateless persons.

Taking into consideration the importance of the substance of the contract for lease of assets, the essence of the contract is predefined legislatively.

The Commercial Code of Ukraine stipulates that for the purpose of execution of a lease contract, the property structure and cost with the adjustment formula, the contract period, rental fees, the depreciation charges application procedure, repossession and return of the leased property, open-end lease conditions are deemed as essential terms and conditions of the contract.

The Law of Ukraine «On Lease of Public and Communal Property» supplements the essential regulations specified by the Code by adding such provisions as enforcement of obligations by means of liquidated damages (penalty, fine), security, advance payment, guarantee, etc.; the procedure for exercising control over the condition of the leased facility; liabilities of the parties; insurance

of leased assets by leaseholders; responsibilities of the parties relating to fire safety of leased property.

It shall be noted that of critical importance to ensure protection of property rights of a leaseholder and to provide for its stable position, is the provision of the Law of Ukraine «On Lease of Public and Communal Property» covering the validity of lease contract terms and conditions for the whole contractual time, as well as for those cases when after execution of the contract the newly adopted legislation worsens the state of lease.

Leasehold valuation is based on renewable costs in accordance with the requirements of *the Leasehold Estimation Procedure* approved by the Cabinet of Ministers of Ukraine in its Resolution No. 629 dated 10 August 1995 (applicable version of CMU's Resolution No. 3 dated 2 January 2003).

The rental calculation and application procedures with regard to the public property are approved by Resolution No. 786 of the cabinet of Ministers of Ukraine dated 4 October 1995.

The rental calculation and application procedures and boundaries for facilities owned by the Autonomous Republic of Crimea shall be established by the authorities duly authorized by the Parliament of the Autonomous Republic of Crimea, and for the facilities of the communal property this function is laid upon local governments.

The rental payment schedule terms are determined in the agreement.

A leaseholder has a right for hire purchase, if such right is envisaged by the law and by provisions of a lease.

Capital lease terms for public (communal) property (integral property complex) are set in accordance with the applicable law.

Privatization of leased integral property complexes is carried out in cases and according to the procedure provided by the law.

Peculiarities of the legal regime applied to the property being under operation of public utility enterprises acting in the field of heat supply are not

reflected in the current legal regulation of the integrated facilities lease issues at all.

Taking the aforesaid into account, there is a strong need for the law-level settlement of special features of transferring of district heating facilities owned by the communal property.

### ***1.2. Concession***

Such a form of PPP as concession has been put into practice in Ukraine, although not always effectively.

Concession issues are governed by the Commercial Code of Ukraine and the Law of Ukraine «On Concessions» dated 16 July 1999, No. 997-XIV.

**Concession** means granting for the purpose of satisfying of public needs by a body of executive power or a body of local self-government in accordance with the concession agreement on a paid and fixed-term basis to a natural person or an entity (agent of the entrepreneurial activity) of a right to create (construct) and (or) to manage (maintain) a concession facility (timed and paid possession) provided that the agent of the entrepreneurial activity (concessionaire) assume responsibilities with respect to the creation (construction) and (or) management (maintenance) of the concession facility, property accountability and prospective business risks;

Features of the concession are as follows:

- the subject of concession may be only public or communal property in the fields predetermined by law;
- any decision on granting concession may be taken mainly based on the concession tendering procedure;
- to exercise the concession, it is necessary to conclude a concession agreement that shall include the relevant special features of concession specified by law;

- concession envisages creation (construction) and/or management of the concession facility based on the respective property shares and business risks involved.

The Law of Ukraine «On Concession» provides definition of facilities which can be granted for concession. In particular, in the field of housing and communal services sector they may be such public-owned or communal facilities which provide services related to the supply of heat to consumers.

Concessionaires may be either natural persons or enterprises, both residents and non-residents of Ukraine.

The Law of Ukraine «On Concession» governs the concession tendering process: the decision-making procedure for granting concession, main principles of holding the concession tenders, announcement of the prospective concession tenders are set forth.

Approval of the list of facilities of the communal property that can be leased for concession shall be done exclusively by plenary sessions of the relevant councils, and decisions on granting concessions with regard to communal property facilities are taken based on the results of the concession tenders by the authorized body of local self-government.

The procedure for appointing of a tender committee and for holding the tendering process is defined by the Cabinet of Ministers of Ukraine in its Regulations on Concession Tendering and Contracting Procedure for Public and Communal Property Facilities that are Subject to Granting Concession, approved by Resolution No. 642 on April 12, 2000.

Although the concession activity is regulated by the Ukrainian legislation, special features of concession are set on a case-by-case basis by a concession agreement.

Parties to the concession agreement are granted the right to decide on the validity period of contractual obligations at their own discretion subject to the concession nature and terms, but the minimum and maximum contract time is

predefined, i.e. the concession agreement shall be entered into for the period not less than 10 years and not exceeding 50 years.

The Law of Ukraine «On Concession» determines the essentials of the concession agreement which are as follows:

- parties of the agreement;
- types of the activity, works, services carried out in accordance with the contract terms and conditions;
- concession facilities (the property structure and cost, as well as technical and financial conditions of creation of a concession facility);
- conditions for provision of land if required for carrying out the concession activity;
- list of types of activity that are subject to licensing;
- terms for setting, changing prices (tariffs) for goods produced or works (services) provided;
- the validity date of the concession agreement, conditions of hiring, using labour of employees being citizens of Ukraine;
- conditions of use of local raw materials, goods;
- conditions and scopes of upgrading of a concession facility and the procedure for recovery of the relevant improvements;
- terms, amounts and schedule of concession payments;
- the depreciation charges application procedure;
- renewal of a concession facility and conditions for termination of transfers;
- liabilities of the parties with regard to non-fulfillment or improper fulfillment of their contractual obligations arising from the concession agreement;
- insuring by the concessionaire of concession facilities;
- procedures for amending and canceling of the concession;
- settlement of disputed between the parties;
- right to know and to audit the execution of contract conditions;

- the procedure and conditions of transferring, including with the provision of guaranties to creditors, of rights and obligations arising from the concession;

- the incorporeal right application procedure.

If the subject of the concession is a district heating facility, the following essential conditions are additionally established:

- mandatory adherence to the license terms and conditions by the concessionaire at carrying out the relevant activity;

- conditions of maintenance of the concession facility in accordance with the requirements of the national standards, rules and regulations applied for the concerned field;

- conditions of returning to the concessor of the concession facility in a proper technical condition on expiry of the concession according to the requirements of the national standards, rules and regulations valid for the moment of such transfer and applied to the relevant field of activities.

If for the concession activity purposes the land is needed, the concession is supplemented with a land rental agreement.

It must be emphasized that terms and conditions of the concession agreement remain in force within the whole contract validity period, including those cases when regulations of the law adopted following the contract execution aggravates the concessionaire's state.

Reorganization of the concessionaire's enterprise provides no grounds for modification or cancellation of the concession agreement.

The Law of Ukraine «On Concession» envisages mandatory registration of the concession agreement.

If the subject of the concession agreement is a communally owned facility, the respective body authorized to sign the concession in accordance with the procedure established by the Cabinet of Ministers of Ukraine, registers the

agreement within the executive body of the relevant council and informs the State Property Fund of Ukraine on the concession conclusion.

The Regulations on the Concession Agreements Register was approved by the Cabinet of Ministers of Ukraine in its Resolution No. 72 dated January 18, 2000, providing for the procedure for conducting concession registry signed by authorities of executive power or local governments.

Concession payments shall be made by a concessionaire in accordance with the terms and conditions of the concession agreement regardless of its business results and shall be credited to the local budget.

The calculation procedure and limiting amounts of concession payments are defined by the Cabinet of Ministers of Ukraine in its Resolution No. 639, *the Procedure for Calculating of Concession Payments*, dated April 12, 2000.

With regard to unprofitable and marginally profitable concession facilities being of high social importance, the concessionaires may be granted privileges in respect of concession payments, as well as subsidies, compensations and benefits as it may be specified in the concession agreement. The procedure for determining such facilities and conditions for granting subsidies, compensations and benefits are approved by the Cabinet of Ministers of Ukraine, Resolution No. 1114, dated 13 July 2000.

Transferring of facilities under concession agreements sets no condition for transferring of the ownership right for the facility involved to the concessionaire and shall not terminate the communal ownership of the concerned facilities.

The property created with regard to the requirements of the concession agreement is the subject of the communal ownership right.

The concessionaire is entitled to the property in profits gained as a result of management (operation) of the concession facility, as well as in products made as a result of implementation of the concession agreement.

Depreciation charges for the capital assets taken under concession or created in connection with the implementation of the concession agreement shall

remain at the concessionaire's disposal and may be used exceptionally for capital renewals of those fixed assets which were taken under concession or created in connection with the implementation of the concession agreement.

As per the requirements of the concession agreement, a concessionaire has the right to carry out reconstruction, re-equipment, rehabilitation of the property under concession out of proceeds of own funds.

The ownership right for the rehabilitated, reconstructed, re-equipped property belongs to the territorial community.

The concessionaire has the right for the adequate and efficient recovery of its costs incurred in connection with melioration of the property under concession out of proceeds of the gained profits, unless otherwise provided by the concession agreement.

When executing the contract, the concessor is obliged to promote for the concession activity purposes the most use of nationals of Ukraine, including those redundant employees fired for liquidation purposes with regard to public or communal enterprises, the property of which is granted for a concession.

*The Model Concession Agreement for the Public or Communal Property* was approved by the Cabinet of Ministers of Ukraine's Resolution No. 643 on April 12, 2000.

### ***1.3. Transfer of Communal Property in Trust***

Issues related to management of assets are governed by the Civil Code of Ukraine.

Under the trust management agreement, one party transfers to another party property for management for a certain period of time, and the other party undertakes on a paid basis to perform in its own name management of this property for the benefit of a settler of trust (a truster) or its authorized person.

In accordance with the trust management agreement, the trustee shall act in its own name with the compulsory indication that it is a trustee.

The subject of the agreement may be individually specifies things only, both movable and real.

The most typical subjects to managements are enterprises, property complexes (assets) and securities. The entity as an integrated property complex encompasses all types of property as provided for the normal operation of the enterprise, including buildings, equipment, inventory, production, raw materials, etc.

Public, communal and private property may be placed in management.

The trust management agreement is made in written, in addition, the real property management agreement shall be notary certified and registered within the state authorities.

If public or communal property is transferred into management, only one body authorized by the owner to manage its property may be entitled to perform functions of a trustee.

Property administration normally requires highly qualified expertise that is why transferring of property in trust management involves intaking of professionals, i.e. agents of entrepreneurial activities.

The Civil Code sets constrains with respect to possibilities of public authorities or local governments, so that these bodies cannot be managers unless otherwise provide by the law.

The Civil Code of Ukraine provides definitions of essential conditions of the trust management agreement. When signing the contract, the parties shall obligatorily agree upon the list of property taken in trust, as well as the amount and form of the wage of property management.

The period of management is established in the trust management agreement. If it is not such determined, the parties agree that the period of trust management of the property shall constitute five years.

In order to protect owner's interests it is provided that the trustee is entitled to alienate the property taken in trust or to pawn it only subject to the truster's agreement.

To promote efficient management of the property, the applicable law provides for the trustee's right for a payment as it is established by the agreement, as well as for the recovery of the necessary costs incurred in connection with the property management.

The trustee that failed to properly perform its duties with regard to the truster's interests is liable for the recovery of sustained damages and lost profits.

The trustee is liable for losses incurred, unless it may prove that these losses are caused by force majeure circumstances or willful acts of the settler of trust.

No special features of transfer of heating facilities in trust management are envisaged by the law. Nevertheless, taking into account peculiarities of the heat supply sector and its social importance, the legally established procedure for transferring of the concerned enterprises in trust management is indispensable.

Having regard to the fact that the trust management agreement has been put into practice only after the adoption of the Civil Code, the hands-on experience of its application is rather limited to date.

#### ***1.4. Joint Ventures***

The law of Ukraine provides for carrying out of investment activities in a form of joint investment of funds and values by natural persons and entities of Ukraine and foreign countries to promote the co-investments development.

Presently the general legal, economic and social conditions of investment activity in Ukraine are defined by the Law of Ukraine «On Investment Activity» dated 18 September 1991, No. 1560-XII.

Special features of foreign investments are established by the Law of Ukraine «On Foreign Investment Regulations» dated 19 March 1996, No. 93/96-VR.

As per the Law of Ukraine «On Foreign Investment Regulations» dated 19 March 1996, No. 93/96-VR, ‘foreign investments’ means values invested by foreign investors into subjects of the investment activity in accordance with the applicable law of Ukraine in order to gain profits or to earn a positive social return.

Hence, regardless of the country of origin, investments work for the investor, or in other words for the agent of economic activity that has intentions, by contributing to the development of an enterprise, to receive such a result that will benefit, first of all, its own budget or image.

In accordance with the Law of Ukraine «On Investment Activity», the property and intellectual values that may be invested into entrepreneurial activities consist of the following: cash assets, earmarked bank deposits, shares, stock and other securities; movables and real estate (buildings, constructions, equipment) and another tangible property; rights of property arising from the copyright, skills and other intellectual valuables; concentration of technological, technical, commercial and other knowledges embodied in a form of technical documentation of attainments and practical skills required for organizing any kind of production, although not patented (know-how); rights for use of lands, waters, resources, buildings, constructions, equipment, as well as other property rights and values.

With regard to the subjects of the investment activity, the Law of Ukraine «On Investment Activity» specifies that the subjects of the investment activity may be any property, including fixed assets and working capital in all branches and areas of the national economy, securities, earmarked cash deposits, technical and scientific outputs, intellectual values, other property objects, as well as rights of property.

The Civil Code of Ukraine provides no definition of joint ventures as one type of businesses. Nevertheless, the Code imposes no bands on their establishment in general, since such possibility is envisaged to be done by other legislative enactments.

Joint ventures may be pertinent as to the group of enterprises based on the mixed-type form of ownership due to the fact that they are established by combining property of different ownership forms. However, these concepts shall not be equated because joint ventures make up a special group of enterprises – as a binding condition there shall be a foreign agent among its founders.

Moreover, due attention shall be given to the fact that the applicable legislation additionally differentiates joint ventures by such a feature as share interests of foreign capital in its statutory capital. As an example, it is stipulated by Article 116 of the Civil Code of Ukraine that the enterprise with no less than 10 per cent of a foreign share in its authorized fund is deemed to be an enterprise with foreign investments.

Joint ventures in the field of heat supply may be founded in accordance with the Law of Ukraine «On Economic Partnerships» by means of registration of a legal entity in a form of a joint venture, limited liability company, etc.

If the company's authorized capital has been increased by more than 10 per cent of foreign investments, then such an investment is subject to state registration by the government of the Autonomous Republic of Crimea, regional (oblast level) state administrations, Kyiv and Sevastopol City State Administrations.

Entities with duly registered foreign investments enjoy privileges and guarantees as it is provided by the Law of Ukraine «On Foreign Investment Regulations».

As mentioned above, such enterprises are considered to be established based on the mixed-type ownership, for they are created by pooling of property of different ownership forms.

### ***1.5. Corporatization***

One of the most efficient instruments of improving the public utilities company management and promoting external financial resources for the purpose of capital investments in the communal infrastructure is corporatization of public utilities, or in other words their transformation into a partnership.

To date in Ukraine there is no law that defines the procedure for conducting corporatization and special features of the legal status of a corporatized entity.

The key regulatory legal act in the concerned field remains to be President's Edict No. 210/93 "On Corporatization of Enterprises" of June 15, 1993 adopted for the purpose of reforming of public sector economy management, setting of responsibility of public entities for their economic activity outcomes, preparing of public companies for privatization.

As it is defined by the Edict, **corporatization** means transformation of public entities, closed joint stock companies with a public share exceeding 75% of their authorized capital, production associations and research and production associations of the legal status not having been brought in conformity with the applicable legislation, into open joint stock companies.

The Edict covers corporatization issues relating to public rather than communal enterprises, however, the relevant bodies authorized to manage the communal property are recommended to carry out corporatization in accordance with the provisions of the Edict.

The corporatization process is deemed completed when registered by the state authorities as an open stock company. A joint stock company is an assignee of rights and obligations of the corporized entity.

Besides, the Present's Edict does not reach the natural monopolies.

The Edict specifies that founders of open stock companies on the part of the State are represented by central bodies of executive power, other bodies and oblast state administrations within jurisdiction of the Cabinet of Ministers of Ukraine, duly authorized to administer the concerned property.

The procedure for carrying out corporatization is set by the Provisions on Corporatization of Enterprises approved by the Cabinet of Ministers of Ukraine on the 5th of July, 1993, No. 508.

A very important issue for the corporatization process is regulation of relationship between the open joint stock company created as a result of

corporatization and the owner of the communal property that is not subject to corporatization and not being a part of the authorized fund of the open stock company but that is nevertheless required for the company's principal activity.

Due attention shall be paid to the fact that up to date the procedure for establishing and functioning of open joint stock companies created in the course of corporatization is governed by the subordinate legislation only with no consideration given to peculiarities of undertakings acting in the field of heat supply.

Therefore, judging from both formal preconditions and nowadays actual needs, the challenge today is the adoption of the corporatization law. From our point of view, when drafting the respective law, special features inherent to corporatization of public utilities operating on the heating market and having a natural monopoly status shall be taken into consideration.

## **2. Possible Ways of PPPs Application in the Field of Heat Supply**

PPPs application in the field of heat supply faces certain constraints.

For example, the Law of Ukraine «On Privatization of Public Property» dated 4 March 1992, No. 2163-XII (also governing issues relating to the assignment of communal assets) prohibits privatization of networks, buildings, equipment relating to the supply of water, gas, heat, as well as to waste water sewerage and treatment.

The Law of Ukraine «On Lease of Public and Communal Property» dated 10 April 1992, No. 2269-XII, prohibits lease of facilities that are not subject to privatization.

Corporatization of enterprises envisaged by President's Edict No. 210/93 «On Corporatization of Enterprises» dated 15 June 1993, may not be applied in relation to those enterprises which are not subject to privatization, as well as to natural monopoly agents.

The Law of Ukraine «On Mortgage» dated 2 October 1992, No. 2654-XII, specifies that facilities which privatization is prohibited may not be the subject of mortgage.

The Law of Ukraine «On Concessions» dated 16 July 1999, No. 997-XIV, provides for the transfer to concession of facilities used for carrying out of activities relating to the provision of heat supply services to consumers.

Taking the aforesaid into account, to date the law prohibits lease and corporatization of heating enterprises.

As far as other PPPs forms are related, the most legally settled are the issues of transfer of heat supply facilities into concession, since concession of these facilities is authorized, and the Law of Ukraine «On Concessions» was amended to include regulations relating to special features of transferring to concession of communal property facilities used for carrying out of district heating activities.

Application in the field of heat supply of such PPP forms as transfer of heating facilities in trust and establishment of joint enterprises is not prohibited by the law. However, instruments of implementation of these PPP forms in the field of heat supply require further enhancement, and in particular at law level.

### **3. Proposals**

Introduction of public-private partnerships in the field of heat supply requires implementation of quite a number of measures, specifically:

1) adopting by the Parliament of Ukraine of the Public-Private Partnership law;

2) adopting by the Parliament of Ukraine of the law on corporatization of heat supply facilities;

3) amending the Law of Ukraine «On Lease of Public and Communal Property» with regard to lifting a ban concerning the transfer of heat supply facilities into lease;

4) adopting by the Parliament of Ukraine of the law on special features of transfer of heat supply facilities into lease;

**ANALYSIS OF THE EXISTING SYSTEM OF PUBLIC REGULATION  
OF THE ACTIVITY OF ECONOMIC AGENTS IN THE FIELD OF HEAT SUPPLY,  
POSSIBLE WAYS OF THE LEGISLATION ENHANCEMENT**

**Table 1. Regulatory Legal Acts of Ukraine Associated with Public Control Issues in the Field of Heat Supply**

<b>Item No</b>	<b>Legislative Enactment of Ukraine</b>	<b>Perview of the Law</b>	<b>Consultant's Notes</b>	<b>Law Enhancement Measures</b>
1.	<b>Law of Ukraine «On Natural Monopolies»</b> of 20.04.2000, No. 1682-III	The Law defines legal, economic and organizational principals of public regulation of natural monopolies. It is established there that district heating is a natural monopoly.	Presently not required.	
2.	<b>Law of Ukraine «On Communal Services»</b> of 24.06.2004, No. 1876-IV	The Law defines main legal frameworks of organizational and economical relations arising in the field of provision and consumption of housing and communal services, sets credentials of government authorities and local governments, rights and obligations of the stakeholders, essential terms and conditions of the contract between service providers and consumers.	The Law requires further elaboration with regard to clarification of authorities of the regulatory bodies, settlement of relations between agents acting in the municipal housing sector.	Draft Law of Ukraine No. 4686 “On Introduction of Changes to the Law of Ukraine “On Housing and Communal Services”, dated 23.06.2009, was developed by the Ministry for Housing and Communal Services and submitted by the Government of Ukraine to the Parliament.  The concerned Draft Law registered by the Parliament of Ukraine proposes a new version of the concerned law. The Draft Law envisages settlement of the mentioned problematic issues. At this stage the review process consultancy support to the Parliament's committees is advisable.

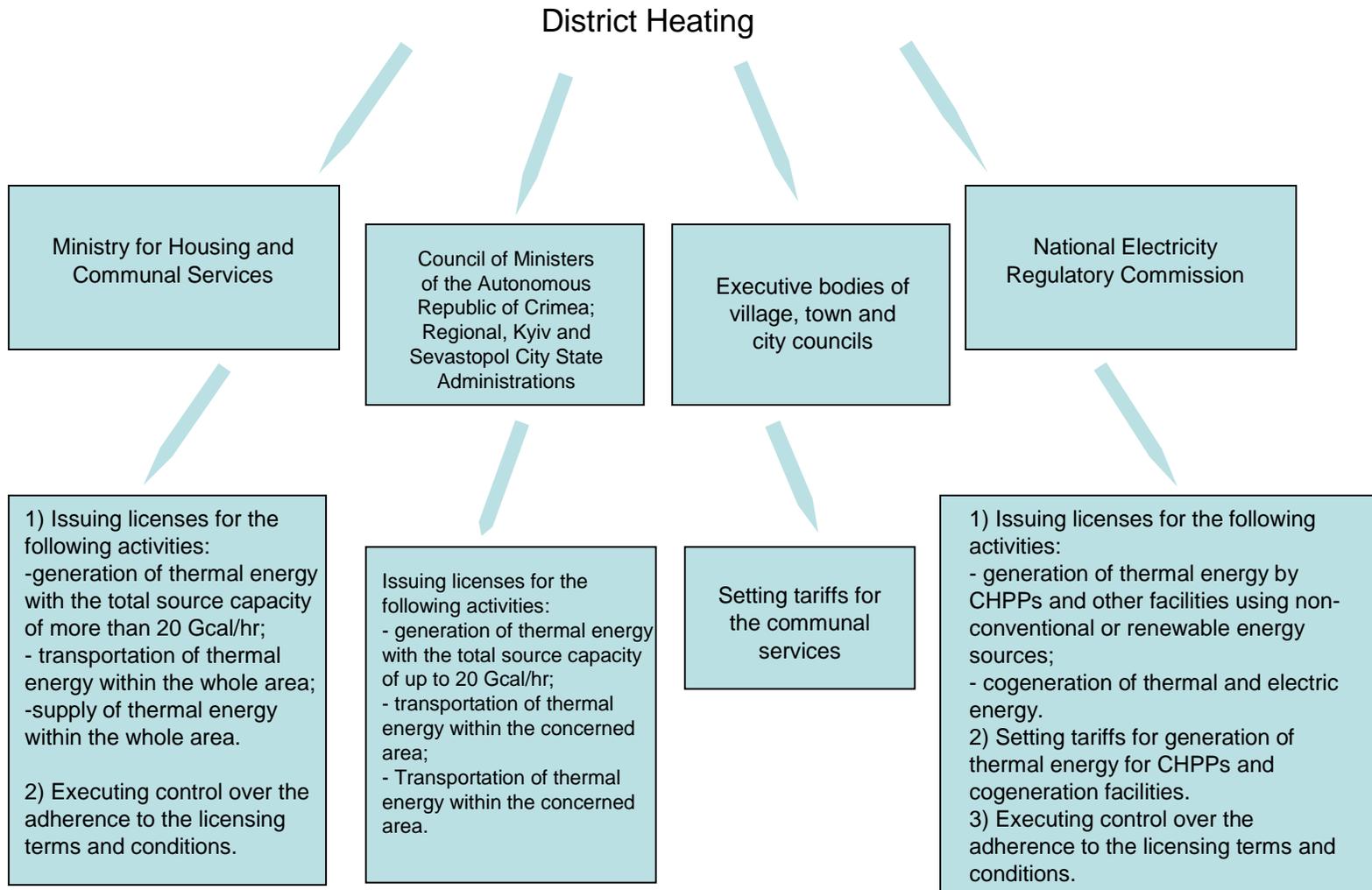
3.	<b>Law of Ukraine «On Heat Supply»</b> of 02.06.2005, No. 2633-IV	The Law settles issues relating to production, transportaion, supply and use of thermal energy.	It is necessary to envisage law enforment measures to be taken by the regulatory authority with respect to license breakers by applying punitive sanctions, as well as peculiarities of the licensing procedure for natural monopoly market players acting in the field of municipal heating.	Draft Laws on introduction of changes to the Law of Ukraine «On Heat Supply» (No. 2336 dated 07.04.2008 and No. 4008 dated 04.02.2009) were submitted for review to the Parliament of Ukraine. However, the above draft laws do not fully cover the concerned problematic issues.
4.	<b>Law of Ukraine «On Licensing of Certain Types of Economic Activity»</b> of 01.06.2000, No.1775-III	The Law determines types of activity that are subject to licensing and the licensing procedure. It is established there that operations of production, transportation and supply of thermal energy are subject to licensing.	The Law shall envisage provisions with regard to special features of licensing in the field of heat supply to be set forth by a special law that is the Law of Ukraine «On Heat Supply».	The Draft Law of Ukraine «On Public Regulation in the Field of Housing and Communal Services» dated 19.11.08, No. 2649, was submitted for review to the Parliament of Ukraine. The Dradt Law provides for the definition of certain licensing peculiarities.
5.	<b>Law of Ukraine «On Local State Administrations»</b> of 09.04.1999, No. 586-XIV	The Law stipulates that regulation of prices and tariffs for housing and communal services is within the authority of local state administrations.	Authorities of state administrations are subject to further clarification because, in accordance with other applicable legal acts, the state administrations carry out licensing in the field of heat supply, while regulation of heating prices and tariffs is the domain of	It is necessary to conduct analysis of the EU requirements, practices of the EU country members in the related field and to develop a draft law on amending of the concerned Law.

			local governments.	
6.	<b>Law of Ukraine «On Local Self-Government in Ukraine»</b> of 21.05.1997, No. 280/97-VR	As per the Law, executive bodies of local councils are empowered to set tariffs for communal services provided by enterprises and organizations of the communal ownership of the respective territorial community, and to agree upon the related issues with non-communal enterprises, establishments and organizations.	Authorities of local councils are subject to further clarification because regulation of tariffs and prices in this field shall be done regardless of ownership forms of heat providers.	It is necessary to conduct analysis of the EU requirements, practices of the EU country members in the related field and to develop a draft law on amending of the concerned Law.

**Table 2. Drafts of the Regulatory Legal Acts of Ukraine Associated with Public Control in the Field of Heat Supply**

Item No.	Draft Regulatory Legal Acts	Perview of Law	Consultant's Notes	Outcomes of the Review
1.	<p><b>On Introduction of Changes to Certain Laws of Ukraine with regard to the Improvement of Regulation in the Field of Natural Monopolies</b>  <i>No. 4729 of 25.06.2009 Cabinet of Ministers of Ukraine</i></p>	<p>It is proposed by the Draft Law to clarify the scope of activity of natural monopoly agents, to extend rights of the national natural monopolies regulatory commissions, to define certain particularities of licensing of natural monopoly and neighbouring markets players, by introducing of changes to the Laws of Ukraine «On Natural Monopolies» and «On Licensing of Certain Types of Economic Activity».</p>		<p>Submitted for review to committees of the Parliament of Ukraine.                      Steering committee - The Committee on Industrial and Regulatory Policies and Entrepreneurialship, headed by N.Yu. Korolevska.</p>
2.	<p><b>Draft Law of Ukraine «On Public Regulation in the Field of Housing and Communal Services»</b>  <i>No. 2649 of 19.11.08 by the parliamentarians V.F. Yanukovych, V.V. Rybak and O.P. Popov</i></p>	<p>It is proposed by the Draft Law to define legal frameworks of public regulation in the field of housing and communal services by, inter alia, creating of a single multisectoral regulatory authority – the National Housing and Communal Services Regulatory Commission of Ukraine as a central body of executive power with a special status.</p>	<p>The Draft Law violates the provisions of the Constitution: it is not the privilege of the Parliament of Ukraine, but of the Cabinet of Ministers of Ukraine to establish, restructure or liquidate central bodies of executive power in accordance with law.</p>	<p>Submitted for review to the Parliament of Ukraine. Steering Committee – the Committee on Constructions, Municipal Development, Housing and Communal Services, and Regional Policy headed by V.V. Rybak.</p>

## The System of Public Control in the Field of Heating



## **1. Law of Ukraine Governing Public Regulation of the Activity of Economic Agents in the Field of Heat Supply**

The Law of Ukraine «**On Natural Monopolies**» dated 20 April 2000, No. 1682-III, provides definitions of the legal, economic and organizational frameworks for public regulation of activities of natural monopolies agents in Ukraine.

The subject of regulation of this Law is relationships emerging in Ukrainian goods markets having status of a natural monopoly and the neighboring markets between agents of natural monopolies.

The Law “On Natural Monopolies” introduced regulation of activity of natural monopoly market agents in the field of heat supply, production of thermal energy in volumes exceeding the level set out by the rules and regulations for carrying out entrepreneurial activities with regard to production of thermal energy (license terms and conditions) is now referred to the heating neighbouring markets.

In accordance with the present Law regulation of activities of natural monopoly market agents is performed by national natural monopoly regulatory commissions, and in some cases envisaged by law such regulation is also assigned to authorities of executive power and local governments.

Presently the energy sector is administered by only one national natural monopoly regulatory commission that is the National Electricity Regulatory Commission of Ukraine that exercises control over the activity of natural monopoly market players in the field of electricity and in the oil and gas industry. Also, the National Electricity Regulatory Commission of Ukraine is empowered to perform the relevant regulation in the heating area on condition that thermal energy is generated by combined heat and power plants, thermal power plants, nuclear power plants, other co-generation units and installations operated based on non-conventional or renewable energy sources.

In accordance with Law the commissions:

- develop and approve special conditions and rules for carrying out entrepreneurial activities by natural monopoly market agents and also neighbouring market agents, exercise control over law observance, take adequate measures to prevent any offence of the above rules and conditions;

- grant licenses for conducting entrepreneurial activities to economic agents of natural monopoly markets and neighbouring markets in accordance with the established procedure; form pricing policies in the concerned natural monopoly fields, set conditions for customers' access to goods produced by natural monopoly market agents;

- submit to the relevant public authorities proposals on execution of public contracts, development of standards and quality indices, as well as their proposals on regulation of investment processes in the natural monopoly areas;

- make and maintain registers of natural monopoly market agents, operation of which is regulated in accordance with this Law;

- contribute to the development of and provide based on the established procedure proposals relating to enhancement of the natural monopolies legislation;

- keep the community informed of their activity and activities carried out by natural monopoly market agents by means of mass media;

- propagate annual progress reports reviewing own activities and also activities carried out by natural monopoly market agents;

- submit to the relevant public authorities materials regarding breaches of the current law;

- perform other functions implied as a result of the tasks entrusted.

In addition, the Laws of Ukraine «On Housing and Communal Services», «On Heat Supply», «On Local State Administrations», «On Local Self-Government» also provides definitions to authorities of the regulatory bodies.

As per the law of Ukraine «On Heat Supply», authorities of the central body of executive power in the field of heat supply (presently represented by the Ministry for Housing and Communal Services of Ukraine) cover regulation of

economic agents' activities in the field of heat supply (except for the systems operated as combined heat and power plants, thermal power plants, nuclear power plants, other co-generation units and installations operated with the use of non-conventional and renewable power sources), namely the following:

- to develop procedures of formation of tariffs for heat production and a fee for heat transportation and supply;
- to ensure unified tariff policy in the field of heat supply;
- to exercise general supervision over the licensing terms adherence; to review cases relating to breaches of license terms with the following making of a decision based on findings of the case review within the limits of their authority;
- to protect customers;
- to raise public awareness with regard to its activity, to conduct publishing activities in the field of heat supply as established by the relevant law provisions.

The same Law provides definition of authorities of the National Electricity Regulatory Commission of Ukraine in the field of heat supply:

- to contribute to creation of competitive environment in this area;
- to regulate tariffs for thermal energy produced at CHPPs, TPPs, NPPs, co-generation installations and facilities operated based on non-conventional or renewable energy sources;
- to carry out licensing of certain types of economic activity in the field of heat supply if thermal energy is produced by CHPPs, cogeneration installations and non-conventional or renewable energy sources facilities;
- to exercise control over the licensing terms observance within the limits of its authorities;
- to review cases connected with breaches of licensing terms and to make adequate decisions within the limits of its authorities.

## **2. Forms of Public Regulation of Activities of Economic Agents in the Field of Heat Supply**

Basic forms of public control applied in the heating area are as follows:

- licensing of thermal energy production, transportation and supply activities;
- regulation of thermal energy production, transportation and supply tariffs;
- exercising control over activities of economic agents in the field of heat supply and application of the adequate sanctions for infringements of license terms.

### **2.1. Licensing**

The Law of Ukraine “On Licensing of Certain Types of Economic Activity” dated June 1, 2000, No. 1775-III, is a basic legal instrument governing relationships in the field of licensing.

In accordance with the above Law, production of thermal energy, its transportation by main and local (distribution) heat networks and supply is subject to licensing.

The Law of Ukraine “On Licensing of Certain Types of Economic Activity” dated 1 June 2000, No. 1775-III specifies the following powers of licensing authorities:

- ensure law enforcement in the licensing area;
- in cooperation with specially authorized licensing body, approve license terms and conditions for carrying out of a certain type of economic activities and exercise control over their adherence;
- issue and re-issue licenses, issue duplicate copies of licenses for a certain type of economic activities, take decisions on declaration of licenses invalid;
- exercise control, within their competence, over the adherence by the license holders to their license terms and conditions;

- issue orders on elimination of license violations;
- terminate licenses for a certain economic activities;
- generate and maintenance the license registry.

Also, the Law sets the list of documents to be submitted to the licensing authority in order to obtain a license, the decision-making procedure for the licensing authority with regard to granting or dismissal of license, the procedure for granting, re-issuing and termination of licenses, and a license granting fee.

## **2.2. Regulation of Prices and Tariffs**

Tariff regulation issues in the field of heat supply are determined by the Laws of Ukraine «On Natural Monopolies» and «On Heat Supply».

The Law of Ukraine “On Natural Monopolies” of April 20, 2000, No. 1682-III, establishes that for the purpose of regulating of tariffs (prices) for goods (services) of natural monopoly market agents the following shall be taken into consideration:

- expenses that are referred to the gross operation and turnover costs in accordance with the applicable taxation legislation;
- taxes and levies (compulsory payments) due to budgets and to state earmarked funds;
- cost of fixed capital stock, depreciation charges, investments required for renovation of fixes assets;
- expected rewards from realizable value of goods sold at different prices (tariffs);
- remoteness of different consumer groups from the place of manufacture of goods;
- quality conformance of the goods produced (realized) to the customers’ needs;
- government subsidies and other forms of government support.

Article 20 of the Law of Ukraine “On Heat Supply” dated 2 June 2005, No. 2633-IY, defines general foundations of setting tariffs for thermal energy.

It is established by the provisions of this Article that:

- tariffs for thermal energy shall cover all economically sound costs for generation, transportation and supply of thermal energy;
- tariffs for thermal energy sold by economic agents enjoying a market monopoly are subject to regulation;
- tariffs for generation, transportation and supply of thermal energy are approved by local governments, except for the thermal energy produced by economic agents engaged in combined heat and power generation and/or making use of non-conventional and renewable energy sources based on calculations provided by heat generating, transporting and supplying companies in accordance with the procedures developed by the relevant central body of executive power in the field of heat supply;
- a thermal energy tariff for a consumer is calculated as a sum of tariffs for generation, transportation and supply of thermal energy;
- tariffs shall cover full costs of thermal energy and ensure such a level of profitability that shall not be lower than the level of profitability set by the Cabinet of Ministers of Ukraine on a submission of the central body of executive power in the field of heat supply;
- if the heating tariff is temporally set lower than the cost price with the profitability level limit taking into account, the authority that fixed the corresponding tariff shall foresee a mechanism of price gap compensation as it is established by the applicable legislation;
- losses of heat generating and supplying companies incurred as a result of exemptions from payment for the consumed thermal energy that may be granted to certain categories of consumers, shall be fully recovered out of the relevant funding sources as it is established by Ukrainian laws envisaging the related privileges.

- regulation of tariffs for thermal energy produced by thermal power plants, other facilities with combined generation of electric and thermal energy is carried out by the National Electricity Regulatory Commission of Ukraine giving due consideration to the following: prices for thermal energy produced by TPPs, other facilities with combined generation of electric and thermal energy shall not exceed prices for thermal energy produced by other heat producing plants within the corresponding territory.

### ***2.3. Exercising Control over the Activity of Economic Agents in the Field of Heat Supply, Application of Sanctions for Violation of License Terms and Conditions***

Functions of regulatory authorities with regard to control over licensing activities of economic agents, as well as application of sanctions for violations of license terms and conditions are specified by the Laws of Ukraine «On Natural Monopolies», «On Licensing of Certain Types of Economic Activity», «On Heat Supply».

The Law of Ukraine “On Natural Monopolies” entitles the national natural monopolies regulatory commissions to exercise control over the adherence of license terms and conditions by natural monopolies market agents and economic agents acting in neighbouring market, as well as to obtain documents, statistic and any other information on the activity of natural monopoly market agents that may be required for the purpose of performing of their duties assigned.

The national natural monopolies regulatory commissions are thereby duly invested with the rights and authorities in order to exercise control over the activity of natural monopoly agents in the most efficient manner.

It is established by the Law of Ukraine “On Licensing of Certain Types of Economic Activity” that control over the adherence by license holders to their license terms and conditions is exercised by licensing authorities by carrying out of scheduled and unscheduled inspections.

The above scheduled inspections are to be conducted not more frequently than once a year.

Unscheduled inspections are conducted by licensing authorities only on submission of a written statement (notice) on violation of license terms by a license holder or for the purpose of execution control with regard to instructions on elimination of license violations.

Section VI of the Law of Ukraine „On Heat Supply” settles issues of liability of law infringements in the heating sector.

In accordance with the Law, authorized authorities shall apply penalty provisions to the economy agents acting as an entity for the following infringements:

- non provision of statutory information to authorized state bodies or provision of wittingly inadequate information – in the amount of fifty personal exemption limits;
- evasion of or delayed fulfillment of decisions or directions of the State Energy Efficiency Inspectorate or the State Inspectorate for Energy Supervision of Electric and Thermal Energy Consumption Modes, and the national Electricity Regulatory Commission of Ukraine – in the amount of three hundred personal exemption limits;
- preventing access or non-admission to heat supply and consumption systems of representatives of state supervisory authorities or heat generating (supplying) companies when discharging their obligations – in the amount up to two hundred personal exemption limits;
- violation of license terms or continuing performance after the expiry of the license – up to two thousand of personal exemption limits;
- unjustified application of tariffs for generation of thermal energy and its transportation or supply, or overcharged payment for the actual thermal energy sold to the consumer (buyer) – in the amount of up to three hundred of personal exemption limits;

- supply of thermal energy
- with the characteristics not corresponding to the requirements of the applicable national standards, approved regulations, the contract of sale, that shall be certified by authorized representatives of the heat supplying (generating) company and the consumer in a relevant – in the amount of one hundred exemption personal limits; and if three such violations had a place, the supplier of thermal energy shall pay a penalty established for violation of license terms;
  - unauthorized disconnection of a consumer from the heat network of heat supplying (generating) company prior to the expiry of the contract of thermal energy sale – in the amount up to five hundred personal exemption limits;
  - water take-off out of heating systems via hydrants or other devices; unauthorized connection to heating systems with no thermal energy sale contract; operation with the use of heat energy metering devices with damaged seals or with the expired term of metrological certification – in the amount up to two personal exemption limits;
  - failure of heat networks owners to perform connection of a heat generating unit or a consumer located within the authorized area of the relevant owner, if the connection requirements have been fully met – in the amount up to three hundred personal exemption limits.

Nevertheless, it shall be noted here that there is no mechanism for application by the Ministry for Housing and Communal Services and local administrations of punitive measures in connection with license terms infringements.

### **3. Summary**

Taking the above mentioned in consideration, the present legal situation reveals the following:

- no legislative enactment is in place to provide for the integrated system of public regulation of activity of economic agents in the housing and communal services sector and to implement a unified control policy in this field;

- execution of public regulation in the heating sector is imposed on the National Electricity Regulatory Commission of Ukraine, the central body of executive power in the field of heat supply and local governments (authorities of heating sector regulatory bodies are defined by a number of legislative enactments, and at the same time the law envisages no clear differentiation of their functions; besides, overlapped functions of property administration and economic agents' activity control are apparent, thus resulting in the conflict of interest);

- authorities for granting licenses for production of thermal energy by CHPPs, TPPs, NPPs, other co-generation installations and facilities operated based on non-conventional and renewable energy sources with the use of co-generation installations are imposed on the National Electricity Regulatory Commission of Ukraine, granting licenses for production of thermal energy by other energy sources, transportation and supply of this energy is within the powers of the Ministry for Housing and Communal Services of Ukraine, as well as the Council of Ministers of the Autonomous Republic of Crimea, regional (oblast), Kyiv and Sevastopol City State Administrations;

- setting of tariffs for generation of thermal energy, except for the thermal energy generated by CHPPs, co-generation installation and other facilities with the use of non-conventional and renewable energy sources, transportation of thermal energy, as well as tariffs for heat supply services is within the authorities of local governments;

- the central body of executive power in the field of housing and communal services is entitled to exercise overall control over the adherence to the licensing terms and conditions, on the other hand, but on the other hand, this body has no legally established authorities with regard to application of punitive measures for license infringements, thus making provisions for the performance of license observance controlling functions.

#### **4. Proposals for Enhancement of the System of Public Regulation of Activities in the Field of Heat Supply**

To promote the efficient system of public control over the activity of economic agents in the municipal housing sector, and particularly in the field of heat supply, it is recommended:

I. To conduct the analysis of best international practices applied in the countries with advanced heating systems to be focused on public regulation in the concerned area, and to define the most widely used public control models.

II. Based on the outcomes of the analysis conducted, to select the most efficient public control model in the field of municipal heating in Ukraine.

Presently several models of public regulation in the field of housing and communal services are being considered by the experts involved:

1) To keep the present system, when control in the housing and communal services sector is exercised by:

- the National Electricity Regulatory Commission of Ukraine with regard to granting of licenses and setting of tariffs for thermal energy generation at CHPPs, TPPs, NPPs and co-generation installations and other facilities with the use of non-conventional and renewable energy sources;

- the Ministry for Housing and Communal Services, local state administrations grant licenses for production, transportation and supply of thermal energy;

- local governments establish heat supply tariffs.

2) To create the National Housing and Communal Services Regulatory Commission to be assigned with the functions of exercising control over the activities relating to heat and water supply and water sewerage services.

3) To create a multisectoral regulatory authority by delegating to the National Electricity Regulatory Commission of Ukraine of additional powers with respect to control over the natural monopoly agents' activity on the market of heat supply, water supply and sewerage services, with the following functions:

- granting to agents of entrepreneurial activity of licenses for production, transportation and supply of thermal energy (regardless of energy sources) with the right for follow-up control over the observance by license holders of the license terms and conditions;
- setting tariffs for production, transportation and supply of thermal energy.

Apart from that, it is also envisaged that regional units of the National Electricity Regulatory Commission of Ukraine will be granted a status of a legal entity with the corresponding assignment of functions related to setting of tariffs for production of thermal energy, except for the energy generated by CHPPs, co-generation installations and other facilities using non-conventional and renewable energy sources, as well as for transportation and supply of thermal energy within the respective areas.

Detection of positive and negative outcomes of the implementation of the public regulation models mentioned above, as well as any other options may be feasible only after examination and in-depth analysis of the relevant international practices.

III. To ensure that the public regulation system is adequately supported with the required legal and regulatory framework by means of, primarily, the following:

- to adopt the law of Ukraine drafted as “On Public Regulation in the Field of Housing and Communal Services”;
- to draft by-laws required for the implementation of the above law of Ukraine.

## ANALYSIS OF THE CURRENT NATIONAL PROGRAMS IMPLEMENTED IN THE HEATING SECTOR

NATIONAL PROGRAMS				
No.	Program Name	Program Key Objectives	Executors of the Program	Funding of the Program
1.	<b>2009-2014 National Public Utility Sector Reform and Development Program</b> approved by Law of Ukraine No. 1869-IV dated 24.06.2004	Key objectives of the Program are as follows: <ol style="list-style-type: none"> <li>1) Development of public regulation of natural monopolies acting in the public utilities market;</li> <li>2) Establishing of state housing policies, promoting of the developed competitive environment in the housing maintenance market, including implementation of integrated reconstruction of blocks of houses (housing estates) of the obsolete housing funds by contracting of property developer investors based on tendering procedures;</li> <li>3) Ensuring profit-gaining operation of public utilities enterprises;</li> <li>4) Technical re-equipment of the housing and communal sector facilities, reducing specific indices of energy and material resources required for production (provision) of public utilities services, including creation of effective and transparent mechanism to promote alternative energy sources and fuel utilization;</li> <li>5) Promotion of investments and cooperation with international financial institutions and donor organizations;</li> </ol>	Ministry for Housing and Communal services	The Program is financed out of proceeds of the state budget, local budgets, corporate funding sources and other sources provided by the law, as well as based on the special taxation regulations with regard to VAT applied to housing and communal services and/or heat supply services.

		6) Public awareness to housing policy-making and public utilities reform.		
<b>2.</b>	<b>National Town Development Program</b> approved by Law of Ukraine No. 1580-IV of 04.03.2004	<p>Key objectives of the Program are as follows:</p> <ol style="list-style-type: none"> <li>1) Competitive market building in the public utilities sector;</li> <li>2) Development of the householder institution and advocating maintenance by communities of their residential properties to contribute to preservation of housing facilities available;</li> <li>3) Introduction of contract-based relations in the sphere of housing and communal services provision;</li> <li>4) Establishment of enterprises focused on the improvement of infrastructure, energy, heat and water supply, industrial and residential toxic solid waste collection and processing, recycling of liquid effluents;</li> <li>5) Increase in the quality of public utilities services provided to residential consumers and decrease in their costs;</li> <li>6) Creation of the local credits and bonds market.</li> </ol>	<p>Cabinet of Ministers of Ukraine</p> <p>Parliament of the Autonomous Republic of Crimea (ARC), ARC Council of Ministers, bodies of local self-government, local state administrations</p> <p>Ministry of Economy, Ministry of Justice, Ministry of Finance, Ministry of Labour, State Committee of Ukraine on Construction and Architecture, State Statistics Committee, Antimonopoly Committee</p>	<p>The Program activities are financed within the frame of the state budgetary policy with the designated activity financing vehicles identified and guaranteed budgetary support of the national priorities.</p> <p>Identification of priorities of the earmarked financing and benefits is based on the state of the social and economic development or repressiveness.</p>
<b>3.</b>	<b>National Small Business Support Program</b> approved by Law of Ukraine No. 2157-III of 21.12.2000	<p>Key objectives of the Program are as follows:</p> <ol style="list-style-type: none"> <li>1) Enhancement of the legal and regulatory frameworks in the field of entrepreneurial activities;</li> <li>2) Establishing of a single state regulatory policy in the field of entrepreneurial activities;</li> <li>3) Promoting of financial, credit and investment support</li> </ol>	<p>Central and local bodies of executive authority ARC Council of Ministers; regional, Kyiv and Sevastopol City state administrations</p>	<p>The Program is financed out of proceeds of the state budget, funds received from privatization of the public property, and other funding sources as provided by the law.</p>

		<p>to small business;</p> <p>4) Contributing to creation of the small business development infrastructure;</p> <p>5) Implementing of the regional small business development policies;</p> <p>In particular, the implementation of state regulatory policies is carried out by:</p> <ul style="list-style-type: none"> <li>- coordinating of operations of different levels of executive power associated with the regulatory activity, preparing of regulatory enactments in line with the public hearing procedures;</li> <li>- appraising of the efficiency of draft regulatory enactments and their economic and social aftereffects;</li> <li>- enhancing of the legal framework aimed at minimizing redundant state interference in the entrepreneurial affairs;</li> <li>- Conducting public awareness campaigns with regard to the implementation of public regulatory policy issues, ensuring publicity of the preparation of legal regulatory enactments by engaging entrepreneurial associations, citizens of Ukraine into the development and discussion processes;</li> <li>- Carrying out of analysis of the introduction of legal and regulatory instruments and providing public disclosure of the status of their implementation;</li> <li>- Enhancing of the regulatory approval system in the entrepreneurial activity sphere, simplification of the public registration procedure for entrepreneurs.</li> </ul>		<p>Certain provisions of the Program are financed out of proceeds of local budgets subject to the relevant decisions of local governments.</p>
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<p><b>4.</b></p>	<p><b>National Program for Harmonization of Ukrainian legislation with the EU Law</b>  approved by Law of Ukraine No. 3167-IV of 18.03.2004</p>	<p>The Program objective is to harmonize the law of Ukraine with the European Union legislation to ensure compliance of the Ukrainian <i>acquis communautaire</i> in line with requirements set by the European Union (EU) to applicant countries.</p> <p>In particular, the Program Action Plan envisages harmonization of the Ukrainian legislation with:</p> <ul style="list-style-type: none"> <li>- European and Council Directive on the Energy Performance of Buildings (2002/91/EC) of 19 December 2002: the Ministry for Housing and Communal Services prepared the Draft Law of Ukraine "On Energy Efficiency of Buildings";</li> <li>- European and Council Directive on Energy End Use Efficiency and Energy Services (2006/32/EU) of 5 April 2006: the National Agency of Ukraine for Efficient Use of Energy Resources prepared the Draft Law of Ukraine "On the Efficient Use of Fuel and Energy Resources".</li> </ul>	<p>Ministry of Justice and other bodies of executive power</p>	<p>The Program activities are financed at each stage out of sources of the state budget of Ukraine, international technical assistance funds and other sources as provided by the law of Ukraine.</p>
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## STATE TARGET PROGRAMS

No.	Program Name	Program Key Objectives	Executors of the Program	Funding of the Program
1	<b>Municipal Heating Sector Modernization State Target Program Concept Paper</b> approved by Administrative Order No. 440-r of the Cabinet of ministers of Ukraine dated 02.04.2009	The Program objective is the integrated rehabilitation of the communal heating energy sector to assure its reliable operations.	Ministry for Housing and Communal Services	The Program funding sources will be clarified in the course of its development.
2	<b>Integrated State Energy Saving Program</b> approved by Resolution No. 148 of 05.02.1997 and Resolution No. 1040 of 27.06.2000 of the Cabinet of Ministers of Ukraine	Principle tasks to be accomplished in the heating sector are defined as follows: 1) replacement of obsolete boilers with the modern equipment; 2) implementation of updated corrosion protection technologies for the heating networks, efficient thermal insulation coating of the pipelines, installation of automation systems and regulation equipment, plate-type heat exchangers; 3) control and automation systems for generation and transportation to end consumers of thermal energy; 4) development and implementation of new type designs to optimally encompass reasonably centralized and decentralized heating systems; 5) use of non-conventional and alternative fuel and	National Agency of Ukraine for Efficient Use of Energy Resources	One of the main funding sources is the National Energy Saving Fund.  Other sources of financing embrace own funds of enterprises, proceeds of local and foreign investors, and ESCOs based on the performance contract or leasing agreement.  Other energy efficiency funding mechanisms include irrevocable financing or provision of budgetary proceeds in a form of lending for primarily pilot projects implemented by the public

		thermal energy sources.		enterprises.
3	<b>2006 - 2010 State Standardization Program</b> approved by Resolution No. 229 of 01.03 2006 of the Cabinet of Ministers of Ukraine	The Program objectives are as follows: 1) development of the intersectoral coordination mechanism, improvement of standardization operation planning поліпшення планування робіт із стандартизації; 2) ensuring compliance of regulatory documents with the international standardization requirements and further enforcement of the provisions of the concerned regulations by all standardization agents; 3) enhancement of data support, updating and renewal of the Documentation Center of the State Committee of Ukraine for Technical Regulation and Consumer Policy, creation of bibliographic and full-text databases, and on-line version expansion; 4) simplification of standardization procedures at the adoption of national standards.	The State Committee of Ukraine for Technical Regulation and Consumer Policy	The Program is financed out of proceeds of the state budget.
4	<b>State Target Ecological Program for Natural Environment Monitoring</b> approved by Resolution No. 1376 of 05.12.2007 of the Cabinet of Ministers of Ukraine	The Program envisages: 1) definition of structural subdivisions of the monitoring system agents accountable for the data exchange; 2) execution and performance of joint operation agreements between monitoring system agents; 3) appraisal of regional and special-purpose programs encompassing tasks and activities relating to environment monitoring with the follow-up control of their execution;	Ministry for Environmental Protection of Ukraine	The Program is financed out of proceeds of the state budget in line with local budget funding.

		4) development and implementation of the on-going public awareness campaign to disseminate information on the environmental conditions.		
5	<b>Integrated Odesa Historical Downtown Conservation Program</b> approved by Resolution No. 996 of 20.06.2000 of the Cabinet of Ministers of Ukraine	Principle tasks of the Program are as follows: 1) restoration of repair buildings and houses, their elements of construction and architecture, engineering networks, ensuring integrated performance of conservation and restoration works (particularly, performance of urgent repair and construction works with regard to engineering networks (water, heat, energy supply, wastewater, gas pipelines); 2) improvement of sanitary and ecological conditions of the downtown area and arrangement of adequate conditions for safe life sustenance.	Ministry for Housing and Communal Services	The Program is financed out of proceeds of the City Historical Area Conservation Fund.

<b>SECTOR PROGRAMS</b>				
<b>No.</b>	<b>Program Name</b>	<b>Program Key Objectives</b>	<b>Executors of the Program</b>	<b>Funding of the Program</b>
<b>1.</b>	<p><b>Sector Program "2009-2020 Standardization and Technical Regulation in the Public Utilities Sector"</b> approved by Order No. 133 of the Ministry for Housing and Communal Services on 12.05.2009</p>	<p>Program key objectives are as follows:</p> <ol style="list-style-type: none"> <li>1) harmonization of the Ukrainian regulatory documents with the applicable ISO and EN standards for each sub-branches of the public utilities sector;</li> <li>2) enhancement of the sector standardization system by developing and reviewing of basic standards, as well as product, process, service and procedure standards;</li> <li>3) improvement of the public utilities sector technical regulation system and the consumer rights protection system in accordance with the requirements of WOT and EU by developing of technical regulations and local standards;</li> <li>4) creation of centralized sector database of regulatory documents.</li> </ol>	Ministry for Housing and Communal Services	The Program is financed out of proceeds of the annual expenditure budget allocated for the Ministry in the frame of the implementation of the budgetary program "Rating and Standardization Developments in the Housing Policy Sphere".
<b>2.</b>	<p><b>2010-2014 Draft Sector Energy Efficiency and Energy Saving Program for the Public Utilities Sector</b> developed by the Ministry for Housing and Communal Services</p>	<p>Program key objectives are as follows:</p> <ol style="list-style-type: none"> <li>1) to promote persistent (year-on-year) decrease in energy intensity of goods, works and services in the public utilities sector by 3-5% in accordance with the tasks put forward by the Energy Strategy of Ukraine for the period up to 2030;</li> <li>2) to enhance the heat and power production, supply and consumption management system;</li> <li>3) to provide a considerable support to priority technical, technological, economic innovation decisions with a special focus on the energy efficiency and energy saving sphere;</li> <li>4) to create the system of energy audit of the technical and</li> </ol>	Ministry for Housing and Communal Services	The Program is financed out of proceeds of the state budget of Ukraine, local budgets, corporate funding sources, investments, including foreign credits, non-budgetary funds, grants provided by international institutions грантів, private funds, etc.

		<p>energy status of the concerned sector to conduct the adequate legal, regulatory, technical and economic measures;</p> <p>5) to equip the sector with the control and metering devices for the supply and consumption of energy resources;</p> <p>6) to identify and implement a range of measures aimed at improving of energy efficiency and energy saving in the public utilities sub-sectors;</p> <p>7) to implement pilot projects on the most effective energy resources production and consumption solutions with the following dissemination of the gained experience in the sector;</p> <p>8) to ensure continuous metering and control over the production, transportation, supply to end consumers of thermal energy and potable water;</p> <p>9) to provide overall support to the auditor institution of the Ministry for Housing and Communal Services of Ukraine to extend its activity in all public utilities sub-sectors, since all activities associated with the improvement of housing and communal sector operations shall be initiated by auditors;</p> <p>10) to contribute to the creation of the executive chain of command (starting from the sector executive body) in order to increase the responsibility level in the energy and water resources use efficiency;</p> <p>11) to promote creation of the energy management system for the municipal heating systems;</p> <p>12) to contribute to the adoption of the Law of Ukraine «On</p>		
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		<p>Fiscal Metering of Resources Supplied to Consumers by Networks»;</p> <p>13) to promote international cooperation in all relevant fields of the public utilities sector;</p> <p>14) to conduct of an ongoing basis of monitoring of the program implementation progress, achievement of energy efficiency goals.</p> <p>15) to develop market energy saving support mechanisms;</p> <p>16) to create the sector system of strategic planning and monitoring, energy resources supply and demand balancing system;</p> <p>17) to provide for the legal and regulatory frameworks for the implementation of energy saving activities;</p> <p>18) to contribute to the implementation of the well-balanced pricing policy with regard to products and services of the public utilities sector in order to fully cover the production expenditures incurred herewith.</p>		
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Projects of the International Institutions				
No.	Project Law	Project Goals	Project Executors	Project Financing
1.	<b>Loan Agreement (Urban Infrastructure Project) between Ukraine and the IBRD</b> ratified by Law of Ukraine No. 592-VI on 24.09.2008	The Project aims to assist participating utilities in moving towards higher quality and reliability of communal services provided to the residential consumers, and improving the ecological situation in Ukraine.	Public utilities	out of loan proceeds
2.	<b>Loan Agreement (Lviv Water and Wastewater Project) between Ukraine and the IBRD</b> ratified by Law of Ukraine No. 317-IV on 28.11.2002	The Project aims to improve operations and management of the water and wastewater systems of the city of Lviv.	Lviv Water and Wastewater Public Utility Company (Lvivvodokanal)	out of loan proceeds
3.	<b>Guarantee Agreement (Zaporizhzhia Water Utility Development and Investment Project) between Ukraine and the EBRD</b> ratified by Law of Ukraine No. 1162-XIV on 19.10.99  <b>Credit Agreement (Zaporizhzhia - Water Utility Development and Investment Program)</b>	The Project goal is to rehabilitate the water supply and water treatment system.	Zaporizhzhia Public Utility Company "Vodokanal"	out of proceeds of the loan and, partially, the budget of Ukraine

	<p><b>between the EBRD and municipally owned water and waste-water company (Vodokanal) of Zaporizhzhia</b></p> <p>Date of signature: 21.05.99 Effective date: 20.12.99</p>			
<b>4.</b>	<p><b>Framework Agreement between Ukraine and the EBRD</b> ratified by Law of Ukraine No. 3392-IV on 07.02.2006</p>	<p>European investment bank' project "The development of water-supply and water treatment system of Mykolayiv sity" includes the major repair of grids, reconstruction and modernization of the treatment plants, implementation of energy saving technologies, and new treatment plants construction – in long-term prospective.</p>	<p>Mykolaiv Public Utility Company "Vodokanal"</p>	<p>out of proceeds of the credit and national funds</p>

## Review of the Existing Institutional Capacities for the Municipal Heating Reform Implementation

Item No.	Name of the Body (Establishment, Organization)	Legal Act Governing Authorities of the Concerned Body (Establishment, Organization)	Functions, Tasks, Authorities (Basic Activities) in the Field of Heating	Consultant's Notes
<b>Public Agencies</b>				
1.	<b>Cabinet of Ministers of Ukraine (CMU)</b>	<p>Constitution of Ukraine</p> <p>Law of Ukraine "On the Cabinet of Ministers of Ukraine" of 16 May 2008, No. №279-VI</p> <p>Law of Ukraine "On Heat Supply" of 2 June 2005, No. 2633-IV</p>	<p>1) Enforcement of budgetary, financial, pricing, investment (including capital investment), fiscal, and industrial policy;</p> <p>2) Preparation and implementation of national programs of the economic, scientific, technological, social, cultural development, environmental protection programs, as well as development, approval and implementation of other state target programs;</p> <p>3) Providing development and public support of the research and innovation capabilities of the state;</p> <p>4) Providing equal conditions for the development of all ownership forms;</p> <p>5) Coordination of activities of central bodies of executive power with regard to the preparation of target programs aimed at heating systems developing, normative and legal acts governing heat price formation issues;</p> <p>6) Nomination of licensing authorities in the concerned field.</p>	<p>Ukraine suffers from the imperfect system of administration of the public and communal property, insufficient institutional capacities of public agencies in the relevant field. For example, development of new models and mechanisms of promotion of the private sector to the public utilities area (lease, concession, trust management) is not adequately supported.</p> <p>Principles for provision of budgetary support do not comply with the present day's needs, and the insufficient budgetary support provides incentives for further increase of consumption by public utilities sector agents, thus provoking their unwillingness and inability to promote investments and benefit from the energy efficiency improvements.</p>
2.	<b>Ministry of Fuel</b>	Provisions, Resolution of	1) Public administration of the fuel and	

	<b>and Energy</b>	the CMU dated 02.11.2006, No. 1540	energy sector; 2) Ensuring implementation of the public policy in the fuel and energy sector; 3) Securing energy supply of the state; 4) Elaboration of proposals encouraging economic incentives for sustainable development of the fuel and energy sector; 5) Contributing to forming, regulation and enhancement of the fuel and energy resources market.	
3.	<b>Ministry for Housing and Communal Services</b>	Law of Ukraine «On Heat Supply» of 2 June 2005, No. 2633-IV  Provisions, Resolution of the CMU dated 12 May 2007, No. 717	1) Contributing to formation and ensuring implementation of the public policy in the field of communal and housing services; 2) Implementing municipal housing reforms; 3) Technical regulation in the housing and communal services sector; 4) Preparation of public target programs for the development of heat supply systems and executing control over their implementation; 5) Development of long-term estimate heat consumption balances; 6) Development of energy carrier consumption and leakage allowances with regard to production, transportation and supply of thermal energy; 7) Settlement of the procedure for maintenance and assurance of monitoring in the field of heating; 8) Coordination of activities of local bodies of executive power; 9) Development and provision of proposals relating to the enhancement of the heat supply legal framework;	

			<p>10) Regulation of activities of natural monopoly market players in the field of district heating centralized water supply and sewerage, except for those economic agents engaged in combined generation of thermal and electric energy and/or using non-conventional or renewable energy sources, namely:</p> <ul style="list-style-type: none"> <li>- ensuring single tariff policy applied to the concerned field;</li> <li>- development of toolkits for calculation of tariffs for thermal energy generation and fees for its transportation and supply;</li> <li>- exercising overall control over the adherence to the licensing terms and conditions, infringement investigation;</li> <li>- protection of consumers' rights.</li> </ul>	
4.	<b>National Electricity Regulatory Commission of Ukraine</b>	<p>Law of Ukraine «On Power industry» of 16 October 1997, No. 575/97-VR</p> <p>Law of Ukraine «On Heat Supply» of 2 June 2005, No. 2633-IV</p> <p>Provisions approved by President's Edict No. 213, dated 14 march 1995 (the Edict's version of 21.04.1998, No. 335)</p>	<ol style="list-style-type: none"> <li>1) Public regulation of natural monopoly agents;</li> <li>2) Ensuring effective operation of goods markets based on balanced interests of the society, natural monopoly agents and consumers of their goods and services;</li> <li>3) Regulation of tariffs for thermal energy produced by CHPPs, NPPs, co-generation facilities and other installations operated based on non-conventional or renewable energy sources;</li> <li>4) Providing licenses to agents of entrepreneurial activities;</li> <li>5) Exercising control over the fulfillment by license holders of the licensing terms and conditions;</li> </ol>	Ukraine is characterized with the imperfect system of public regulation in the natural monopolies field, particularly, the tariff policy that provides no incentives to decrease energy losses and consumption or to start gaining from energy savings, underdevelopment of the existing efficient forms of company management (lease, concession, trust management), lack of sufficient experience in preparation and implementation of investment projects.

			6) Carrying out license infringement investigations.	
5.	<b>National Agency of Ukraine for Efficient Use of Energy Resources</b>	Law of Ukraine «On Energy Efficiency» of 1 July 1994, No. 74/94-VR  Provisions, Resolution of the CMU dated 3 April 2006, No. 412	1) Ensuring a single public policy in the field of efficient use of energy resources and energy saving; 2) Promoting increased portion of alternative fuel in the energy carrier demand-and-supply balance; 3) Creation of the state system for monitoring of production, consumption, export and import of energy carriers, enhancement of the energy resources consumption metering and monitoring system; 4) Providing support to operations of a single rate setting system for specific consumption of energy resources in the social production.	The Agency possesses no sufficient law guaranteed authorities or makes inadequate use of its actual powers. The existing mechanisms promoting energy saving incentives are imperfect and non-efficient.
6.	<b>Council of Ministers of the Autonomous Republic of Crimea</b>	Law of Ukraine «On Approval of the Constitution of the Autonomous Republic of Crimea» of 23 December 1998, No. 350-XIV  Law of Ukraine «On Heat Supply» of 2 June 2005, No. 2633-IV	1) Development of the economy; 2) Planning of the economic and social development; 3) Issues relating to the fuel and energy sector; 4) Issues relating to the municipal housing sector, living environment, architecture and urban development; 5) Environmental protection issues; 6) preparation and implementation of local programs in the field of heating; 7) exercising control over the supply of thermal energy to urban and other community consumers.	The controlling authority accountable for the housing and communal sector is not provided with the adequate powers to effect the activity of public utilities located in the Autonomous Republic of Crimea.
7.	<b>Regional State</b>	Law of Ukraine «On Local	1) Regulation of prices and tariffs for works	It is necessary to clarify authorities of

	<b>administrations, Kyiv and Sevastopol City State Administrations</b>	State Administrations» of 9 April 1999, No.586-XIV  Law of Ukraine «On Heat Supply» of 2 June 2005, No.2633-IV	performed and housing and communal services provided by enterprises; 2) Setting consumption rates for housing and communal services, exercising control over their fulfillment; 3) Preparation and implementation of local programs in the field of heating; 4) Exercising control over the supply of thermal energy to urban and other community consumers.	the concerned bodies, particularly, with regard to licenses actually granted by them. At law level no authorities are specified with regard to control over the adherence to licensing conditions and punitive administration. Enhancement of authorities shall ensure balancing of the public utilities providers regulation system at the local level, establishing partnership relations between local executive authorities and local governments.
<b>Interagency Bodies</b>				
1.	<b>Interagency Councils on Enhancement of Public Regulation of the Communal Services Market</b>	Resolution of the CMU dated 26 November 2008, No. 1062	1) Development of proposals regarding: - identification of lines of approach, means and forms of implementation of strategic areas of enhancement of public regulation of the communal services market and control over the activity of natural monopoly agents acting in the concerned field; - carrying out of legal, economic, organizational and social measures aimed at improving of public regulation of the communal services market; - ensuring protection of consumers' rights for communal services of the proper quality based on the economically sound prices and tariffs; - facilitating of the efficient activity of natural monopoly agents in the communal services market with due consideration to	The Council arranges discussions of issues associated with regulation of activities of business agents acting in the public utilities market.

			<p>the interests of a community, natural monopoly agents and communal services consumers;</p> <ul style="list-style-type: none"> <li>- provision of incentives for the increase of quality of services (goods), encouragement of competition in the neighbouring markets;</li> <li>- enhancement of efficiency of operations of the public controlling authorities;</li> </ul> <p>2) Conduction of the analysis of the following:</p> <ul style="list-style-type: none"> <li>- performance of central bodies of executive power relating to the increase in efficiency of public regulation and control over the activity of natural monopoly agents in the communal services market with the follow-up conclusions and proposals;</li> <li>- fulfillment by natural monopoly agents acting in the communal services market of requirements to the transparency of their financial reporting and to communal services tariff setting and application policies;</li> </ul> <p>3) Preparation in accordance with the established procedure of proposals relating to draft regulatory legal acts;</p> <p>4) Keeping the CMU and public informed on the state of public regulation and control over the activity of natural monopoly agents in the communal services market.</p>	
2.	<b>Interagency National Heating Strategy Development Task Force</b>	Resolution of the CMU dated 7 May 200, No. 465	<p>1) Identification of general heating development policies;</p> <p>2) Coordination of activities relating to the preparation of local communal heating</p>	In the frame of the present Interagency Task Force several working groups were created, in particular, the working group on

			sector development programs, further program-based development of the Strategy; 3) Organization of interaction between central bodies of executive power with regard to the Strategy preparation; monitoring of the Strategy implementation; 4) Preparation of proposals with regard to the development of regulatory legal acts governing heating reform and development issues.	development of public regulation in the public utilities market, the working group on preparation of regional and public rehabilitation projects in the heat and power sector, the working group on increase of energy efficiency of residential and administrative buildings. Meetings of the working groups aimed at reviewing of current topical questions are carried out on a regular basis. The following issues have been discussed: public regulation of natural monopoly agents in the public utilities market, possible ways of state-level regulation of tariffs for district heating, water supply and sewerage services.
3.	<b>Exemption System Adjustment Interagency Commission</b>	Resolution of the CMU dated 27 August 2008, No. 756	1) Organization of interaction of central bodies of executive power with regard to gradual transition to the pecuniary aid system in order to settle the exemption system issues; 2) Development of regulatory legal acts relating to the exemption system adjustment; 3) Promotion of the agreed unified approach to the exemption system adjustment; 4) Approval of the Action Plan on development of proposals relating to gradual transition to the pecuniary aid system; 5) Raising public awareness with regard to the proposed approaches to settlement of issues relating to exemption system	Representatives of the Ministry for Housing and Communal Services take participation in the Commission's meetings. Presently, the task of the Commission is to provide for the efficient implementation of the Exemption System Adjustment Strategy for the period up to 2012 approved by the CMU.

			adjustments, in particular introduction of gradual transmission to the targeted pecuniary aid system.	
4.	<b>Interagency Task Force on Coordination and Control of Preparation and Implementation of Municipal Sector Development Projects</b>	Resolution of the CMU dated 23 July 2008, No. 661	1) Development of proposals with regard to the following: - ensuring interaction of executive authorities in the project preparation and implementation; - drafting regulatory legal acts governing municipal sector reform and development issues; - conducting analysis of the project status, as well as any problems arising in the course of project preparation and implementation, with the following submission of proposals.	The Task Force performs revision, appraisal and dissemination of best practices of the municipal sector projects implementation. Particularly, the Task Force spoke positively in favour of the EBRD supported Zaporizhzhia Water Utility Development and Investment Program, examined outcomes of the IBRD co-financed Lviv Water and Wastewater Project. The IBRD financed Ukraine Urban Infrastructure Project is currently under implementation. Draft legal and regulatory acts is being reviewed with regard to the promotion of investments provided by the international financial institutions.
5.	<b>Interagency Coordinating Council on National Energy Balance Development Issues</b>	Regulation of the CMU dated 1 March 2006, No. 121-r	1) Coordination of activities of central and local executive bodies, enterprises, establishments and organizations relating to normative and legal regulation, financial and organizational support of the national energy balance development issues; 2) Monitoring of the national energy balance indices.	The Council's prerogative is to carry out progress monitoring of the Energy Balance Concept Action Plan.
6.	<b>Municipal Housing and Communal Sector</b>	Resolution of the CMU dated 1	1) Coordination of activities of ministries, other central and local executive bodies,	The Commission reviews issues associated with implementation of the

	<b>Reform Implementation Interagency Commission</b>	December 1999, No. 2194	<p>local governments, enterprises, establishments and organizations as related to the fulfillment of main tasks identified in the 2004-2010 National Municipal Housing and Communal Sector Reform and Development Program, review of proposals focused on the program efficiency enhancement;</p> <p>2) Preparation of proposals concerning further implementation of the housing and communal services sector reform, particularly its social, economic, organizational, investment, innovation and engineering areas;</p> <p>3) Conduction of the analysis of the municipal housing and communal sector reform outcomes and promotion of the advanced experience in the concerned field;</p> <p>4) Execution of control over the implementation of social protection measures in the course of transmission of utility companies to the market economy;</p> <p>5) Organization of public awareness campaign to promulgate public policy principles of implementation of the housing and communal sector reform and its social and economic importance.</p>	reform in the public utilities sector, considers draft legal instruments on the above issues.
<b>Bodies of Local Self-Government</b>				
	<b>Village, town and city councils</b>	Law of Ukraine «On Local Self-Government in Ukraine» of 21	1) Approval of local heating development programs, contribution to the development and implementation of national and regional programs in the concerned area;	In most regions of Ukraine heat tariffs do not cover the costs of services provided. Most of them encompass no investment constituent thus providing

		<p>May 1997, No. 280/97-VR</p> <p>Law of Ukraine «On Heat Supply» of 2 June 2005, No. 2633-IV</p>	<p>2) Approval for the heating sector of municipal development programs, master settlement development plans, heat supply layouts and other municipal development documents;</p> <p>3) Execution of control over the supply of thermal energy to consumers in accordance with the regulatory requirements;</p> <p>4) Provision of no-objections to laying out of newly constructed or rehabilitated heating facilities within the relevant administrative and territorial unit, and promotion of sustainable development of the heating system within the concerned area;</p> <p>5) Administration of public utility facilities owned by the relevant territorial communities, ensuring their due maintenance and efficient operation, as well as the required level and quality of services provided to residential consumers;</p> <p>6) Based on the established procedures and within the applicable legal frames, setting tariffs for public utilities services provided by communal enterprises and organizations of the relevant territorial community; following the established procedures, getting agreement of enterprises, establishments and organizations of non-communal ownership on the above issues;</p> <p>7) Reviewing issues associated with the procedure and conditions of alienation of the communal property, draft local privatization programs, and the list of communal</p>	<p>no incentives for the efficient operation of a public utility company, energy efficiency, envisaging no possibilities to plan and carry out rehabilitation of networks and facilities or to introduce up-to-date energy efficient know-hows and equipment.</p> <p>Apart from that, the present tariff setting policy of local bodies of self-government is in many respects exposed to politics.</p>
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			ownership facilities that are not subject to privatization; 8) Reviewing issues associated with identification of economic activity areas and the list of facilities which may be provided to concession.	
<b>Community Organizations and Charitable Foundations</b>				
1.	<b>Association of Ukrainian Cities</b>	Law of Ukraine «On Associations of individuals» of 16 June 1992, No. 2660-XII  Charter of the Association of Ukrainian Cities and Communities	1) Protecting of constitutional territorial communities' rights and freedoms to perform local self-governing; 2) Promoting of the development of local self-government; 3) Contributing to the social and economic development of settlements; 4) Providing of methodical and practical aid to bodied of local self-government; 5) Conducting of beneficial activities aimed at settling social and economic problems of territorial communities; 6) Arranging cooperation and interaction with overseas local governments, their associations and international organizations engaged in the local self-government.	The housing and communal services sector created in the Association covers the following issues: - preparation of proposals on improving of operations of the municipal housing sector, exchange of experience in the concerned field; - analysis of draft legal acts submitted for review and approval to the CMU and the Parliament of Ukraine, development of the relevant proposals to the above; - arrangement of cooperation with the central bodies of executive power.
2.	<b>Institute of Social and Economic Strategies</b>	Law of Ukraine «On Associations of Individuals» of 16 June 1992, No. 2660-XII Charter of the Institute	1) Development of social and economic development concepts and programs; 2) Appraisal of draft laws and programs relating to the social and economic development of the state; 3) Provision of analytical services to bodies of executive authorities and local governments;	The Institute is an active partner of the Ministry for Housing and Communal Services of Ukraine with regard to such issues as enhancement of the policy of tariff regulation of natural monopoly agents acting in the public utilities sector, review of recent international trends and best

			4) Arrangement of scientific and practical conferences, seminars, round tables, etc.	practices of the housing infrastructure development, etc.
3.	<b>Institute for Economic Research and Policy Consulting</b>	Law of Ukraine «On Associations of Individuals» of 16 June 1992, No. 2660-XII Charter of the Institute	1) The subject of activity is as follows: - business trends; - welfare of the population; - infrastructure; - corporate management; - macroeconomics; - international economy; - monetary policy and financial markets; - politics; - real sector; - regional policy; - fiscal and social policy.	The Institute collaborated with the Ministry for Housing and Communal Services during 2009 year.
4.	<b>Municipal Development Institute, All-Ukrainian Charitable Organization</b>	Law of Ukraine «On Charity and Charitable Foundations» of 16 September 1997, No. 531/97-VR Charter of the Institute	1) Assistance in increase of educational and informational level of the public in respect of condition and problems of municipal development and development of public utilities infrastructure; 2) Assistance in cooperation between non-governmental non-for-profit organizations, companies, institutions, individuals and state and local administrations; 3) Assistance in sharing experience of developed democratic countries in respect of municipal development, reform of public utilities infrastructure; 4) Assistance in development of local government; 5) Assistance to ecological public institutions and other interested parties in activities aimed at environment preservation;	The Institute collaborated with the Ministry for Housing and Communal Services on drafting of legal regulatory.

			<p>6) Assistance in collection, learning, processing and distribution of information regarding best management practices and advanced technologies in public utilities sector;</p> <p>7) Assistance in preparation and implementation of plans for social-economic development of municipal administration;</p> <p>8) Assistance in organization of seminars, lectures, conferences, courses, exhibitions which relate to the Organization's activities.</p>	
<b>Other Companies</b>				
1.	<b>Institute for Economics and Forecasting of the Ukrainian National Academy of Sciences</b>	<p>Law of Ukraine «On Scientific and Research Activity» of 13 December 1991, No. 1977-XII</p> <p>Charter of the Institute</p>	<p>1) Basic areas of researches:</p> <ul style="list-style-type: none"> <li>- economic development modeling;</li> <li>- economic growth and structural changes in the economy;</li> <li>- economy theory;</li> <li>- institutional changes and development of business forms;</li> <li>- technological forecasting and innovative policy; <ul style="list-style-type: none"> <li>medium- and short-term macroeconomic forecasting;</li> </ul> </li> <li>- financial and budgetary forecasting;</li> <li>- sectoral forecasts and analysis of market conditions.</li> </ul>	<p>Under request of the Ministry for Housing and Communal Services, the Institute investigated a question of the public utilities system operation and management, mechanisms of public financial support to the development and modernization of the communal heat and power sector, etc.</p>
2.	<b>Koretsky Institute of State and Law of the National Academy of Sciences</b>	<p>Law of Ukraine «On Scientific and Research Activity» of 13 December 1991, No. 1977-XII</p>	<p>1) Basic areas of researches:</p> <ul style="list-style-type: none"> <li>- problem issues of the science of law and state in Ukraine: theory, history, practice;</li> <li>- legal problems associated with democratization of social relations and buildup of a civil society, institutionalizing</li> </ul>	<p>The Institute cooperated with the Ministry for Housing and Communal Services as related to preparation of legal regulatory acts.</p>

		Charter of the Institute	and enforcement of human rights and freedoms; - pure and applied problems of the Ukrainian legal framework development; - theoretical and practical problems of enforcement of the Constitution and legislation in Ukraine; - Ukraine within the frame of current international justice system and European integration: theory and practice - open issues of encyclopedic legal researches, philosophy and sociology of law.	
3.	<b>Energy and Nuclear Law Centre of the V.M.Koretsky Institute of State and Law of the National Academy of Sciences of Ukraine</b>	Law of Ukraine «On Scientific and Research Activity» of 13 December 1991, No. 1977-XII  Charter of the Center	1) Rendering consulting, information and other services to individuals and entities with regard to nuclear, energy, natural resources and other legislation, law enforcement practice; 2) Developing on request of public authorities, local governments and their associations, enterprises, establishments, international and other organizations, individuals of draft legal acts and other legal regulatory or regulatory documents; 3) Conducting of scientific researches, preparation of scientific expert assessments, development of scientific methodological and other types of recommendations relating to legal regulation of relations as appropriate to the energy, nuclear, natural resources legislation, as well as to neighbouring law areas, with regard to the relevant law enforcement issues, its scientific interpretation.	The Ministry for Housing and Communal Services contracted the Center to carry out of a research of possible ways for enhancement of the legal regulatory framework governing centralized water supply and wastewater issues, improvement of public administration in the housing policy field.

4.	<b>Institute of Sociology of the National Academy of Sciences of Ukraine</b>	Law of Ukraine «On Scientific and Research Activity» of 13 December 1991, No. 1977-XII  Charter of the Institute	The priority research trends of the Institute are as follows: 1) Social conditions for market economy development; 2) Factors of adaptation of individuals to social crises realities; 3) Trends and mechanisms of social differentiation; 4) Dynamics of social well-being of the population.	The Institute cooperates with the Ministry for Communal and Housing Services on social development issues. Particularly, the Institute contributed to the implementation of progress monitoring of the municipal housing reform effected by the financial crises.
5.	<b>Institute of Engineering Thermophysics of the National Academy of Sciences of Ukraine</b>	Law of Ukraine «On Scientific and Research Activity» of 13 December 1991, No. 1977-XII  Charter of the Institute	Basic research activities: 1) thermophysical researches in heat and power installations using conventional and renewable energy sources and development of methods to increase their effectiveness, reliability and ecological safety; 2) development of the heat exchange theory and its application to increase the efficiency of heat transmission and use processes in machinery and devices of the emerging technology; 3) development of the heat and mass transfer theory to increase the efficiency of current and to develop conceptually new energy saving and energy efficient heat technologies.	The Institute cooperates with the Ministry for Communal and Housing Services on different technical and economic issues.
6.	<b>Institute of Engineering Ecology, Ltd.</b>	Law of Ukraine «On Undertakings» of 19 September 1991, No. 1576-XII  Charter of the company	The company conducts researches and engineering works in the engineering ecology and heat sectors. Also, it is engaged in the implementation of projects for GHG emission reduction.	The company cooperates with the Ministry for Communal and Housing Services on the Kyoto Protocol issues, including mechanisms for enforcement of its provisions.

7.	<b>JurEnergConsulting Legar Firm LLP</b>	Law of Ukraine «On Undertakings» of 19 September 1991, No. 1576-XII Charter of the company	The company is specialized in providing legal, financial and economic consulting services to public authorities, energy and public utility enterprises.	The company collaborated with the Ministry for Communal and Housing Services on issues relating to enhancement of the legal and regulatory framework in the housing and utilities sector. Particularly, JurEnergConsulting developed changes to the Laws of Ukraine «On Housing and Communal Services» and «On Heat Supply».
8.	<b>Closed Joint Stock Company "EFEN-Kyiv"</b>	Law of Ukraine «On Undertakings» of 19 September 1991, No. 1576-XII Charter of the company	1) Basic fields of activity: - economic expertise of company operations, investment projects, etc.; - management and financial audit; - economic researches on optimization of asset and inventories accounting and utilization, selection of the depreciation policy; - supply of Russian made equipment and spare parts of OJSC Izhor Factories and JSC Domodyedovsky Machinery Plant Conditioner within Ukraine.	The company collaborated with the Ministry for Communal and Housing Services on economic and financial issues in the field of water and heat supply.
<b>International Organizations</b>				
1.	<b>The U.S. Agency for International Development (USAID)</b>	USAID is an independent federal government agency.	USAID is focused on the implementation of economic growth and humanitarian assistance programs.	USAID in Ukraine implements the Municipal Heating Reform Project aimed at strengthening the legal, regulatory, and institutional framework to improve heating services to customers; improving tariff regulation and methodology; educating the public and government officials on these matters; enhancing

				<p>the capacity of municipalities to plan, manage, and fund the development of the heating systems; and improving energy efficiency in residential and municipal buildings.</p> <p>Apart from that, USAID carries out the Developing Municipal Energy Efficiency Market Project and another project focused on sharing of positive experience of PPPs application in the housing and communal sector.</p>
2.	<b>The International Bank for Reconstruction and Development (IBRD)</b>	The IBRD is a specialized UN establishment, intergovernmental investment institution, and key lending institution of the World Bank.	<p>1) Contribution to the economic development of its member countries by providing long-term loans and credits;</p> <p>2) Promotion of foreign investments by granting guarantees or by participating to lending and other investments of private creditors;</p> <p>3) Promotion of sustainable development of international trade, provision of support to balances of international payments of member countries.</p>	<p>The IBRD in Ukraine is advancing energy efficiency programs in the heat supply sector, provides support to the introduction of consumption regulation and accounting systems, as well as energy efficiency project, pilot projects in the municipal housing sector.</p> <p>Presently, the IBRD finances the Ukraine Urban Infrastructure Project and other projects aimed at upgrading of the central water supply and wastewater systems.</p>
3.	<b>The European Bank for Reconstruction and Development (EBRD)</b>	The EBRD is an international financial institution. The Bank's shareholders are sixty-one countries and two intergovernmental	<p>1) Promoting economic development and reconstruction of Central and Eastern European Countries which demonstrated their commitments to democratic principles;</p> <p>2) Supporting Central and Eastern Europe counties in updating their production capacities, financing competitive entrepreneurial operations primarily in the private sector;</p>	<p>In Ukraine, the Bank provides financing in different types of activities, inter alia credit lines for the financial sector, small and medium-sized enterprises, long-term project financing, private joint stock capital investments, rehabilitation and development project lending, import/export operations funding. The</p>

		institutions (the European Community and the European Investment Bank)	<p>3) Advancing investments to the production, service and financial sectors;</p> <p>4) Promoting large economically sound projects;</p> <p>5) Providing technical support in project implementation;</p> <p>6) Contributing to capital market development;</p> <p>7) Contributing to settlement of environmental issues.</p>	<p>key focus is given on financial institutions, agribusiness, real estate, power generation and transmission projects, infrastructure, including transport and public utility services, and the steel sector.</p> <p>The Interagency Commission on Coordination and Control of Preparation and Implementation of Public Utility Sector Development Projects reviews possible ways for the implementation of investment projects in the concerned area out of funding sources of the EBRD.</p> <p>Presently, financing of the Mykolaiv Vodokanal (water treatment plant) is under preparation</p>
	<b>The European Investment Bank (EIB)</b>	The EIB is a financial institution of the European Union that provides long term loans to underdeveloped European regions.	The EIB provides loans for construction and rehabilitation of facilities which may be of interest for the EU member countries and associated states.	In Ukraine, the EIB implements the Mykolaiv Water Utility Development Project with the objectives to perform complete overhaul of networks, rehabilitation and update of sewerage treatment works, introduction of energy efficient technologies, and in the longer term construction of new treatment facilities.

### Sub-Task 1.2.

## Conduct Stocktaking of Legal, Regulatory and Institutional Frameworks and Capacities in Heat Sector: General Matrix

Problem issue	Impact	Relative applicable legislation		Implemented measures		Recommended measures	
		Laws	Gaps	Measures	Gaps	Measures	Anticipated outcome
<b>I. Lack of the efficient system of public regulation of activities conducted in the field of local heat supply</b>	<ul style="list-style-type: none"> <li>State energy security and energy independency</li> <li>Competitiveness in the field of local heating</li> <li>Quality of goods (services)</li> <li>Rights of consumers of goods (services)</li> </ul>	<ul style="list-style-type: none"> <li>Law of Ukraine “On Natural Monopolies”</li> <li>Law of Ukraine “On Heat Supply”</li> <li>Law of Ukraine “On Housing and Communal Services”</li> <li>Law of Ukraine “On Licensing of Certain kinds of Economic Activity”</li> <li>Law of Ukraine “On Local State Administrations”</li> <li>Law of Ukraine “On Local Self-Government in</li> </ul>	<ul style="list-style-type: none"> <li>Lack of clear distribution of powers of public authorities with their counterparts and local governments in the field of public control over the activity of local heat supply companies, particularly, with regard to price/tariff setting issues;</li> <li>Lack of clear definition of the public regulation domain in the field of heating;</li> <li>Lack of clear definition of forms and methods of public regulation in the field of local heating.</li> </ul>	<p>The following laws have been drafted aimed at enhancing of the existing public regulation system in the field of local heat supply:</p> <ul style="list-style-type: none"> <li>“On Introduction of Changes to Certain Laws of Ukraine relating to the Enhancement of Regulation in the Field of natural Monopolies”, No. 4729 dated 25.06.2009</li> <li>“On Public Regulation in the Field of Housing and Communal Services”,</li> </ul>	<ul style="list-style-type: none"> <li>Fallibility of the single public regulation system in the field of local heating</li> <li>No unified approach has been worked out with regard to the regulator’s legal status</li> <li>No clear definition of the subject of public regulation is provided, such as types of activities that are subject to public regulation;</li> <li>Forms and methods of public regulation are not settled;</li> <li>It is not definitively</li> </ul>	<p>I. Analysis of best international practices of public regulation in the concerned sphere to summarize the widespread advanced public regulation models.</p> <p>II. Based on the above analysis, selection of the public regulation model to be the most efficient for the Ukrainian public utilities</p>	<ul style="list-style-type: none"> <li>Establishment of the system of bodies authorized to perform public regulation in the public utilities sector, including local heating;</li> <li>Clear distribution of public regulation powers between public authorities, as well as local governments in the field of local heating, particularly with regard to price/tariff regulation;</li> <li>Promotio</li> </ul>

Problem issue	Impact	Relative applicable legislation		Implemented measures		Recommended measures	
		Laws	Gaps	Measures	Gaps	Measures	Anticipated outcome
		Ukraine”		No. 2649 dated 19.11.2008 <ul style="list-style-type: none"> <li>“On the National Public Utilities Markets Regulatory Commission of Ukraine”</li> </ul>	settled the issue of distribution of powers between the regulator and other public authorities, and local governments.	sector.  III. Development of draft laws and subordinate legislation focused on the implementation of the selected public regulation model in the housing and communal utilities sector.	n of favorable conditions for the development of competition and for local and foreign investments to the local heating sector;  <ul style="list-style-type: none"> <li>Protection of goods/services consumer rights in the field of local heating.</li> </ul>
<b>II. Lack of legal, organizational and economic incentives for energy efficiency and energy saving activities in the local heating sector</b>	<ul style="list-style-type: none"> <li>State energy security</li> <li>State energy independency</li> <li>Environmental issues</li> <li>Material welfare of residential consumers (a portion of</li> </ul>	<ul style="list-style-type: none"> <li>Law of Ukraine “On Energy Efficiency”</li> <li>Law of Ukraine “On Heat Supply”</li> <li>Law of Ukraine “On Housing and Communal Services”</li> </ul>	<ul style="list-style-type: none"> <li>Law of Ukraine “On Energy Efficiency” that is a basic legal enactment in the field of energy efficiency, provides no government of peculiarities of energy saving and energy efficiency in certain areas,</li> </ul>	Draft laws have been developed to improve the legal regulation of relations in the field of energy saving and energy efficiency, including local heating, specifically: <ul style="list-style-type: none"> <li>“On the</li> </ul>	The financial and legal incentives to promote energy efficiency in the local heating sector, and primary the state support mechanism, require further elaboration, also in line with the	4. Improvement of general (basic) legal enactments governing social relations in the field of energy efficiency in the local	<ul style="list-style-type: none"> <li>Creation of legal, organizational and economic conditions for energy audits of heating companies and housing sector, energy certification of offices, public</li> </ul>

Problem issue	Impact	Relative applicable legislation		Implemented measures		Recommended measures	
		Laws	Gaps	Measures	Gaps	Measures	Anticipated outcome
	<p>payment for utilities consumed in the households costs)</p> <ul style="list-style-type: none"> <li>Competitiveness of the national economy</li> </ul>	<ul style="list-style-type: none"> <li>Law of Ukraine “On Corporate Income Tax”</li> <li>Law of Ukraine “On Value Added Tax”</li> <li>Law of Ukraine “On Local Self-Government in Ukraine”</li> <li>Law of Ukraine “On Local State Administrations”</li> </ul>	<p>particularly in the field of local heating.</p> <ul style="list-style-type: none"> <li>The law-level legislation provide no clear definition of specific legal, organizational and financial mechanisms to promote energy saving and energy efficiency. Particularly, relationships in the field of energy audit, promotion of energy efficiency and energy saving in offices, public and residential buildings, as well as the communal energy sector require further settlement.</li> <li>The top priority measures shall include introduction of</li> </ul>	<p>Efficient Use of Fuel and Energy Resources”, No. 4361 dated 14.04.2009</p> <ul style="list-style-type: none"> <li>No. 4457 dated 12.05.2009 “On Energy Efficiency of Buildings”</li> <li>No. 1036 dated 27.11.2007 “On Energy Audit”</li> <li>No. 1411 dated 23.01.2008 “On Special Features of Budgetary Support of Energy Efficiency Activities Implemented in Budgetary Establishments”</li> <li>“On Introduction of Changes to the</li> </ul>	<p>relevant best international practices.</p>	<p>heating sector, primarily the Laws of Ukraine “On Energy Efficiency”, “On Heat Supply”, “On Housing and Communal Services”, and, as the next sep, the Laws of Ukraine “On Combined Generation of Heat and Electric Energy (Co-Generation) and Use of Spill Energy”, “On Alternative Energy Sources”, “On Alternative Types of</p>	<p>and residential buildings;</p> <ul style="list-style-type: none"> <li>Introduction of building level metering systems, including installation of heat meters;</li> <li>Enhancement of taxation mechanisms focused on promoting of energy saving and energy efficiency in the heating sector;</li> <li>Promotion of energy efficiency in business premises of public authorities and local self-governments.</li> </ul>

Problem issue	Impact	Relative applicable legislation		Implemented measures		Recommended measures	
		Laws	Gaps	Measures	Gaps	Measures	Anticipated outcome
			building level metering systems, issuing of building energy passports, implementation of the integrated update of communal heating facilities, etc.	Laws of Ukraine “On Combined Generation of Heat and Electric Energy (Co-Generation) and Use of Spill Energy” and “On Priority Areas of Innovation Activity in Ukraine” (regarding promotion of further development of co-generation facilities”, No. 3323 dated 28.10.2008		Fuel”, as well as certain taxation laws (primarily, the Laws of Ukraine “On Corporate Income Tax” and “On Value Added Tax”) with regard to provision of taxation incentives for energy efficiency.  5. Development and adoption of special legal acts aimed at implementing of conceptual issues specified by framework laws	

Problem issue	Impact	Relative applicable legislation		Implemented measures		Recommended measures	
		Laws	Gaps	Measures	Gaps	Measures	Anticipated outcome
						<p>governing social relations in the concerned areas, primarily such laws as “On Energy Efficiency of Buildings” and “On Energy Audit”.</p> <p>6. Harmonization of applicable legal acts (primarily as related to powers of executive authorities and local governments in the concerned field by amending the</p>	

Problem issue	Impact	Relative applicable legislation		Implemented measures		Recommended measures	
		Laws	Gaps	Measures	Gaps	Measures	Anticipated outcome
						Laws of Ukraine “On Local Self-Government in Ukraine”, “On Local State Administrations”, “On Housing and Communal Services”, “On Heat Supply”, “On Energy Efficiency”).	
<b>III. Lack of organizational and legal backgrounds for efficient cooperation of public agents, primarily, the state, on the one hand and the private sector on the other hand in</b>	<ul style="list-style-type: none"> <li>• State energy security</li> <li>• State energy independency</li> <li>• Environmental issues</li> <li>• Financial and economic status of enterprises</li> <li>• Technic</li> </ul>	<ul style="list-style-type: none"> <li>• Civil Code of Ukraine</li> <li>• Economic Code of Ukraine</li> <li>• Law of Ukraine “On Privatization of Public Property”</li> <li>• Law of Ukraine “On Lease of Public and Communal Property”</li> </ul>	The applicable Ukrainian legislation governing public-private partnership issues (particularly, lease, concession, trust management, creation of joint ventures) in general and in particular in the field of local heating require further enhancement.	A number of laws and subordinate legal enactments has been drafted to promote PPPs, particularly: <ul style="list-style-type: none"> <li>- Draft Law of Ukraine No. 3447d “On General Provisions for the Development of Public-Private</li> </ul>	It is not clearly settled the rights and obligations of the state and private partners in the field of local heating.	1) Adoption by the Cabinet of Ministers of Ukraine of the Concept Paper for the Development of Public-Private Partnership in the Housing and	<ul style="list-style-type: none"> <li>• Integrated modernization of the communal heating sector with the use of domestic and foreign investment funds.</li> <li>• Reduction of production costs of goods</li> </ul>

Problem issue	Impact	Relative applicable legislation		Implemented measures		Recommended measures	
		Laws	Gaps	Measures	Gaps	Measures	Anticipated outcome
<b>order to eliminate problematic issues in the local heating sector.</b>	al status of the infrastructure	<ul style="list-style-type: none"> <li>• Law of Ukraine “On Concessions”</li> <li>• Law of Ukraine “On the Investment Activity”</li> <li>• Law of Ukraine “On Foreign Investment Environment”</li> </ul>		Partnership in Ukraine” dated 14.04.2009 (adopted in general on 25.06.2009) <ul style="list-style-type: none"> <li>- Draft Law of Ukraine No. 2306 “On Corporatization of Heat, Water Supply and Waste Water Utilities” dated 01.04.2008</li> <li>- Draft Law of Ukraine No. 2320 “On Special Features of Provision in Lease and Concession of District Heating, Water and Waste water Facilities of the Communal Property” dated 03.04.2008</li> <li>- Draft</li> </ul>		Communal Sector; 2) Adoption by the Parliament of Ukraine of the Law of Ukraine “On Special Features of Provision in Lease and Concession of District Heating, Water and Waste water Facilities of the Communal Property”; 3) Support to pilot projects relating to provision of heating facilities in lease and concession	(services) in the field of local heating. <ul style="list-style-type: none"> <li>• Optimization of funds of local and state budgets allocated for the rehabilitation of local heating sector.</li> <li>• Quality improvement of goods (services) by introducing local and international advanced technologies.</li> </ul>

Problem issue	Impact	Relative applicable legislation		Implemented measures		Recommended measures	
		Laws	Gaps	Measures	Gaps	Measures	Anticipated outcome
				Concept Paper for the Development of Public-Private Partnership in the Communal Sector developed by the Ministry for Housing and Communal Services.		and improvement of model concession and leasing agreements; 4) Adoption of the Law of Ukraine “On Corporatization of Public Utilities Acting in the Water and Heat Supply and Waste water Sector”; 5) Arrangement of training in PPP for executive authority officials performing public administration in the field of heating,	

Problem issue	Impact	Relative applicable legislation		Implemented measures		Recommended measures	
		Laws	Gaps	Measures	Gaps	Measures	Anticipated outcome
						representatives of local governments and employees of public utilities; Extension of positive experience gained in PPP projects implemented in the heating sector in Ukraine and abroad.	