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**MUNICIPAL HEATING  
REFORM IN UKRAINE**

# MUNICIPAL HEATING REFORM PROJECT (MHR)

## Interim Report

**on the status of providing consulting support during the process of consideration of the Draft Laws of Ukraine related to municipal heating by the Committees of the Verkhovna Rada of Ukraine and participation in experts working groups of the inter-agency working group on developing the National Municipal Heating Strategy**

**November 2009**

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## **REPORT**

During the reporting period Law firm “JurEnergConsulting”, LLC has accomplished the following tasks:

1. The draft Law of Ukraine under the draft title “On the National Communal Services Market Regulatory Commission of Ukraine” has been improved taking into account remarks of authorities submitted as the result of its consideration (Annex 1), the draft explanatory note to this draft law has been also improved (Annex 2), as well as the draft Resolution of the Cabinet of Ministers of Ukraine “On Establishment of the National Commission of Communal Services Market Regulation of Ukraine” (Annex 3) and explanatory note to this resolution of the GOU (Annex 4) have been prepared.

2. Within the frames of consulting support of the reforming legislation of Ukraine in the sphere of establishment and activity of homeowners’ associations the draft Law of Ukraine “On Amendments to Certain Legal Acts of Ukraine for the Purpose of Ensuring Implementation of Energy Saving (Energy Efficient) Efforts in Multifamily Houses” (Annex 5) has been developed, as well as accompanying documents (Annexes 6 – 9).

3. The comments to the draft Law of Ukraine “On Special Features of Leasing and Concession of Communal District Water and Heating Supply and Sanitation Facilities” (Annex 10) have been prepared.

4. During the reporting period the experts of the Consultant took part in the meetings of the following EWGs of the inter-agency working group on developing the National Municipal Heating Strategy:

- EWG on improving energy efficiency of residential and administrative buildings – 17 November 2009 (experts of JurEnergConsulting presented their vision of reforming legislation of Ukraine on HOA’s with respect to implementation of tasks on increasing energy efficiency of multifamily residential buildings (Annex 11)).

**LAW OF UKRAINE**  
**On the National Commission of Communal Services Market Regulation**  
**of Ukraine**

This Law defines a legal framework for establishment and operation of the National Commission of Communal Services Market Regulation of Ukraine.

**Chapter I**  
**GENERAL PROVISIONS**

**Article 1. Definition of Terms**

In this Law the terms mentioned below shall be used in the following meaning:

subject of natural monopoly is an economic agent (legal entity) of any form of ownership (monopoly entity) that provides activity in the market which is in state of natural monopoly in the spheres of district water supply and sanitation, district heating via main and local (distribution) networks.

economic agent in an adjacent market is an economic agent that performs activity in the sphere of heat energy production (except when it is used only for internal production needs) in the amounts that exceed the level set by license conditions (except economic agents that perform combined heat and power production and/or use alternative sources of energy), district heating.

The terms “natural monopoly” and “adjacent market” shall be used in this Law in the meaning defined in the Law of Ukraine “On Natural Monopolies”.

**Article 2. Objectives of the National Commission of Communal Services Market Regulation of Ukraine**

The key objective of the NCCSMR shall be conducting state regulation of activity of the subjects of natural monopolies and economic agents in adjacent markets, namely:

balance of interests of economic agents, consumers of their goods and services, and the state;

ensuring transparency and openness in the markets of natural monopolies and adjacent markets;

protection of rights of the consumers of goods and services with respect to obtaining these goods and services of proper quality and in sufficient amount at

economically grounded price, as well as stimulation of their quality increase and satisfaction of demand for them;

establishment and ensuring predictability of the pricing and tariff policy in the markets which are in state of natural monopoly and adjacent markets, promotion of implementation of incentive price regulation methods;

ensuring self-sustainability of the subjects of natural monopolies and economic agents in adjacent markets;

ensuring equal opportunities for access of consumers to the goods (services) in the markets which are in state of natural monopoly;

restriction of influence of the subjects of natural monopolies on the state policy and promotion of competition in the markets adjacent to the markets which are in condition of a natural monopoly in order to ensure effective functioning of the relevant sectors.

### **Article 3. Key Principles of Activity of the NCCSMR**

Key principles of activity of the NCCSMR shall be as follows:

- 1) law compliance;
- 2) publicity, accessibility, openness and transparency of the regulation procedure and predictability of the process of regulation of activity of economic agents in natural monopoly markets and adjacent markets;
- 3) independence and predictability of state regulation process;
- 4) collegiality, independence and objectiveness in decision making;
- 5) targeting of regulation, its focus on a specific subject of natural monopolies and economic agent in adjacent markets;
- 6) protection of the rights of consumers of goods (services) in the market which is in state of natural monopoly and in adjacent markets;
- 7) responsibility for adopted decisions and compensation of damage incurred to the economic agents that produce (sell) goods in the market which is in state of natural monopoly, as well as economic agents acting in adjacent markets.

### **Article 4. NCCSMR Powers**

NCCSMR shall:

- 1) participate in formation and implementation of state policy in the area of heat, district water supply and sanitation;
- 2) perform:
  - licensing of economic activity on district water supply and sanitation on the territory of administrative units with the population of not less than 100 000 natural persons or in the event when the systems of district water supply and sanitation are located on the territory of two or more regions, as well as in case of performance of such activity by joint ventures and enterprises with foreign investments; development

and approval of license conditions and standard form contracts to them, as well as the order of control over adherence to these requirements;

licensing of economic activity on heat production (except production of heat at plants with combined heat and power production and/or use alternative sources of energy) with aggregate capacity of more than 20 Gcal/h, transporting it via main and local (distribution) heat networks and heat supply; development and approval of license conditions and standard form contracts to them, as well as the order of control over adherence to these requirements;

development of methodology (procedure) for prices/tariffs setting for communal services;

approval of prices/tariffs for communal services rendered by the subjects with monopoly status in the sphere of heat, water supply and sanitation;

supervision (control) over activity of the subjects of natural monopolies and economic agents in adjacent markets and imposing appropriate sanctions for infringement of conditions and rules of performing relevant economic activity;

4) set requirements on business performance to the subjects of natural monopolies, whose activity does not belong to the sphere of natural monopolies in case when this business impacts the market which is in state of natural monopoly;

5) define the subjects of natural monopolies whose activity shall be regulated in accordance with this Law, as well as compile and keep sectorial registers of such economic agents. The subjects of natural monopolies are defined according to the procedure established by the Antimonopoly Committee of Ukraine and central body of executive power for ensuring state economic policy implementation. The joint list of subjects of natural monopolies is kept by the Antimonopoly Committee of Ukraine based upon the registers of national commissions on regulating natural monopolies;

6) conduct constant monitoring, analysis of the markets which are in condition of natural monopolies and forecasts of their development;

7) implement efforts for monopoly restriction, regulation of terms of business performance, as well as facilitate creating conditions for taking out product markets from the state of natural monopoly and competition development in adjacent markets;

8) approve special conditions and rules for performing business activity by the subjects of natural monopolies and economic agents acting in adjacent markets, as well as standard form contracts to these rules, control adherence to them, take measures regarding prevention of these conditions and rules infringement according to the prescribed procedure;

9) define indicators below which the subjects of natural monopolies and economic agents in adjacent markets of communal services of Ukraine can perform their activity without licenses;

10) fulfill control over preventing cross-subsidization during performance of economic activity by the subjects of natural monopolies and economic agents in

adjacent markets of communal services of Ukraine that results or can result in non-admission, elimination, restriction or distortion of competition;

11) set restrictions regarding the combination of types of activity by the subjects of natural monopolies and economic agents in adjacent markets of communal services of Ukraine;

12) define the compliance of liquidation, reorganization in the forms of merger, acquisition, association, purchase or alienation of more than 25 percent of equity stake (shares, stock) of business entities with conditions and rules for performing licensed activity;

13) monitor the proper use of funds received at the expense of tariffs;

14) develop requirements and fulfill control over the implementation of investment programs of the subjects of natural monopolies aimed at renovation of assets, increase of efficiency and costs reduction while performing the activity subject to regulation;

15) within the limits of its powers, fulfill control over the quality of produced goods or rendered services in the sphere of natural monopolies and adjacent communal services markets of Ukraine;

16) develop and approve the rules of heat energy use, rules of connection to heat and water supply networks and standard form contracts to these rules;

17) receive for free:

statistical reporting in the volume, according to the procedure and within terms defined by the legislative acts from the subjects of natural monopolies and economic agents in adjacent markets;

documents, materials, statistical and other information defined by the legal acts from central and local executive power bodies and bodies of local self-government;

18) according to the Code of Ukraine on Administrative Violations, compile the protocols on violations of legal acts on heat supply, district water supply and sanitation, as well as on natural monopolies by the officials of the subjects of natural monopolies and economic agents in adjacent markets;

19) submit data that can testify to the facts of violation of legislation on economic competition protection to the bodies of the Antimonopoly Committee of Ukraine;

20) apply to court with the relevant claims in case of violation of the legal acts on communal services, heat supply, water supply and natural monopolies by the subjects of natural monopolies and economic agents in adjacent markets;

21) create favorable conditions for attraction of investors in order to develop infrastructure in the market of communal services;

22) create equal conditions for activity of the subjects of natural monopolies and economic agents in adjacent markets;

23) develop and approve the Rules of procedure of the NCCSMR;

24) interact with the state power bodies, local self-government bodies, Ukrainian associations of employers and entrepreneurs, Ukrainian trade unions and professional associations, enterprises, institutions and organizations on the issues within its competence;

25) inform the public including Ukrainian associations of employers and entrepreneurs, Ukrainian trade unions and professional associations on the results of its work, found the mass media, official editions (digests) of legal acts and publish regulatory legal acts, data envisaged by the legislation and other information in them, maintain an Internet web page;

26) exercise other powers envisaged by this and other laws.

## **Chapter II**

### **NCCSMR STRUCTURE AND ARRANGEMENT OF ACTIVITY**

#### **Article 5. NCCSMR Status**

The National Commission of Communal Services Market Regulation of Ukraine (hereinafter – NCCMR) is a collegial central body of executive power that shall perform the functions of the body of state regulation, the activity of which shall be guided and coordinated by the Cabinet of Ministers of Ukraine.

For ensuring the implementation of powers of the NCCSMR, the central office and territorial offices shall be established and act based upon the provisions approved by NCCSMR Chairman.

#### **Article 6. Structure and Establishment Procedure of the NCCSMR**

The NCCSMR shall consist of the Chairman and four Commissioners who are appointed and dismissed by the Cabinet of Ministers of Ukraine, upon submission of the Prime Minister of Ukraine.

NCCSMR Chairman and Commissioners shall be appointed for the period of six years.

NCCSMR Chairman and Commissioners cannot occupy the position for more than twelve years in total.

The NCCSMR shall be legally competent from the moment of appointment of all its members.

Any citizen of Ukraine not older than 60 years (men) and 55 years (women) with higher education in the relevant sphere, economics or law, at least three years of managerial work experience on leading positions in the relevant spheres during last 10 years can be appointed a NCCSMR Chairman or Commissioner.

NCCSMR Chairman or Commissioners cannot be the holders of corporate rights of the subjects of natural monopolies and economic agents in adjacent markets, receive financial or material remuneration and allowance from them, or to occupy any other position, including on a voluntary basis.

NCCSMR Chairman or Commissioner may be dismissed in the following cases:

- 1) resignation;
- 2) termination of the Ukrainian citizenship;
- 3) inability to fulfill their obligations due to state of health;
- 4) coming into legal force of the judgment of conviction in their respect;
- 5) violation of restrictions envisaged by part five of this Article;
- 6) on other grounds envisaged by the legislation on public service.

Should there be openings for positions of the NCCSMR Chairman or Commissioner, the Cabinet of Ministers of Ukraine shall appoint a new Chairman or Commissioner within one month. Term of powers of the newly appointed NCCSMR Chairman or Commissioner shall correspond to the term of powers of the NCCSMR.

#### **Article 7. Arrangement of NCCSMR Activity**

NCCSMR Chairman shall:

- 1) organize NCCSMR and its secretariat activity, facilitate quick and effective solution of issues within NCCSMR competence;
- 2) chair NCCSMR meetings;
- 3) represent the NCCSMR in relations with the state power bodies, enterprises, institutions and organizations;
- 4) inform the Cabinet of Ministers of Ukraine on the regulatory legal acts and other decisions adopted by NCCSMR;
- 5) submit an annual report on NCCSMR activities and situation with communal services during the past year to the Cabinet of Ministers of Ukraine;
- 6) report on the issues related to NCCSMR activities at the meetings of the Cabinet of Ministers of Ukraine;
- 7) issue orders on the issues of NCCSMR secretariat activities;
- 8) hire and dismiss employees of NCCSMR staff;
- 9) exercise other powers according to the regulation.

Meetings held according to the Rules of procedure approved by the NCCSMR are an organizational form of NCCSMR activity.

NCCSMR meetings shall be held in the form of open or closed hearings. NCCSMR meetings shall be legally competent when at least three its members are present.

NCCSMR decisions shall be adopted at its meeting with the majority of votes of total NCCSMR membership. The Chairman and every Commissioner of the NCCSMR shall have one vote. In case of even distribution of votes, the Chairman's vote shall be decisive.

The NCCSMR, within its powers based upon and aimed at law execution, shall adopt decisions in the form of resolutions and instructions.

NCCSMR decisions adopted within the limits of its powers shall be mandatory for fulfillment by the subjects of natural monopolies and economic agents in adjacent markets.

NCCSMR decisions may be appealed according to the procedure established by the law.

#### **Article 8. Openness of NCCSMR Activity**

NCCSMR shall implement efforts in order to ensure openness of its activity.

NCCSMR agenda and term of its publication and publication of NCCSMR decisions shall be defined by its Rules of Procedure.

In case of consideration of the issues of social importance, the meetings shall be held in the form of open hearings, in which the subjects of natural monopolies and economic agents in adjacent markets, as well as organizations representing interests of consumers and public organizations are entitled to participate according to the procedure established by the NCCSMR.

For the purpose of protection of consumers' rights, the NCCSMR shall cooperate with the organizations that represent the interests of consumers, provides information on the activity of subjects of natural monopolies and economic agents in adjacent markets to such organizations and consumers except the cases when such information has restricted access.

Consumers have the right to apply to the NCCSMR in order to resolve the issues that belong to its competence. The NCCSMR shall consider such applications and adopt decisions according to its powers.

#### **Article 9. Supervision (Control) over the Communal Services Market**

Supervision (control) over the communal services market shall be exercised through the inspection of state of fulfillment of the requirements of legislation and license conditions by the subjects of natural monopolies and economic agents in adjacent markets;

In order to exercise supervision (control) over the communal services market, NCCSMR officials and officials of its territorial offices shall be entitled to:

1) have unrestricted access to the territory and premises of the subjects of natural monopolies and economic agents in adjacent markets, upon the condition of compliance with the requirements of the procedure for state supervision (control) envisaged by the law;

2) conduct scheduled and unscheduled inspections;

3) within the limits of its powers, issue instructions mandatory for fulfillment by the subjects of natural monopolies and economic agents in adjacent markets about elimination of facts of violation of regulatory legal acts;

4) apply sanctions for violation of legal acts on communal services, heat supply, water supply and natural monopolies to the subjects of natural monopolies

and economic agents in adjacent markets according to the procedure established by the legislation;

5) receive for free explanations and other materials necessary for fulfillment of the tasks allotted on NCCSMR from the subjects of the communal services market information.

#### **Article 10. Financing NCCSMR Activity**

NCCSMR financing shall be conducted at the account of the State Budget of Ukraine.

NCCSMR and its territorial offices expenditures, including the amount of expenses for remuneration of the Commissioners and employees of the central office and regional offices, shall be envisaged in a separate item.

Payment for the services rendered by the NCCSMR to natural persons and legal entities in the cases identified by the laws of Ukraine, namely, payment for issuance of the licenses to carry out certain types of business activities shall be deposited into a special fund of the State Budget of Ukraine according to the law on the State Budget of Ukraine. The indicated funds shall be used for funding of the NCCSMR activity, in particular, for creation and development of information and analysis base, publication of printed editions of the NCCSMR, for funding of the activities of consulting and advisory bodies with participation of consumers' representatives, entrepreneurs and experts, for remuneration to the scientists, experts and consultants on scientific and expert, as well as informational provision of NCCSMR activity.

NCCSMR budget shall be approved by its Chairman upon prior approval of the Ministry of Finance of Ukraine.

#### **Article 11. Scientific and Methodological, as well as Informational Provision of NCCSMR Activity**

For fulfillment of the tasks that the NCCSMR is charged with, it shall establish scientific, consultative and advisory bodies on a voluntary basis.

For scientific and methodological, as well as informational provision of its activity, adoption of the balanced regulatory decisions, the NCCSMR shall involve scientists, experts, consultants and representatives of the public.

The Regulation on scientific, consultative and advisory bodies shall be approved by the NCCSMR.

The NCCSMR shall found the mass media that cover the issues of its activity and regulation of activity of the subjects of natural monopolies and economic agents that perform activity in adjacent markets.

### **Chapter III**

## **INTERRELATIONSHIPS OF THE NCCSMR WITH THE BODIES OF STATE POWER. INTERNATIONAL COOPERATION**

### **Article 12. Interrelationships of the NCCSMR with the Cabinet of Ministers of Ukraine**

The Cabinet of Ministers of Ukraine guides and coordinates NCCSMR activity by means of:

ensuring NCCSMR participation in the development and implementation of the state policy in the sphere of district heating, water supply and sanitation;

adoption of regulatory legal acts on state regulation issues in the sphere of district heating, water supply and sanitation stipulated in this and other laws;

ensuring effective interaction of the NCCSMR with other bodies of executive power and local self-government authorities authorized to perform state regulation of the subjects of natural monopolies and economic agents in adjacent markets.

The Cabinet of Ministers of Ukraine shall ensure autonomy and independence of the NCCSMR while performing the functions of state regulation of the subjects of natural monopolies and economic agents in adjacent markets on other state bodies, local self-government authorities, legal entities and natural persons.

### **Article 13. Interrelationships of the NCCSMR with the National Electricity Regulatory Commission of Ukraine**

The NCCSMR shall interact with the National Electricity Regulatory Commission of Ukraine (hereinafter – NERC) regarding the issues on state regulation of the subjects of natural monopolies and economic agents in adjacent markets in the sphere of district heating in the process of joint development of methodology (procedure) of tariff setting for the subjects of natural monopolies and economic agents in adjacent markets in the sphere of district heating.

### **Article 14. Interrelationships of the NCCSMR with the Council of Ministers of the Autonomous Republic of Crimea, Regional, Kyiv and Sevastopol City State Administrations**

The NCCSMR shall interact with the Council of Ministers of the Autonomous Republic of Crimea, regional, Kyiv and Sevastopol city state administrations regarding the issues on state regulation of the subjects of natural monopolies and economic agents in adjacent markets in the process of licensing their activity.

The Council of Ministers of the Autonomous Republic of Crimea, regional, Kyiv and Sevastopol city state administrations shall license the following economic activities according to the license conditions set by the NCCSMR:

district water supply and sanitation if such activity covers the territory of an administrative unite with the population of less than 100 000 natural persons;

production of heat energy (except production of heat energy at plants with combined heat and power production and/or use alternative sources of energy) with aggregate capacity up to 20 Gcal/h inclusive.

The NCCSMR shall perform control over adherence to law by the Council of Ministers of the Autonomous Republic of Crimea, regional, Kyiv and Sevastopol city state administrations in the process of licensing the subjects of natural monopolies and economic agents in adjacent markets.

#### **Article 15. NCCSMR International Cooperation**

The NCCSMR shall conclude the international treaties of Ukraine, take part in implementation of international projects and programs, as well as cooperate with the government bodies and non-government organizations of foreign countries, international organizations on the issues within its competence.

### **Chapter IV**

#### **LIABILITY OF THE SUBJECTS OF NATURAL MONOPOLIES AND SUBJECTS OF BUSINESS IN ADJACENT MARKETS, NCCSMR AND ITS OFFICIALS**

#### **Article 16. Imposing Fines on the Subjects of Natural Monopolies and Subjects of Business in Adjacent Markets**

The NCCSMR shall apply sanctions to the subjects of natural monopolies and economic agents in adjacent markets for:

- 1) untimely submission of information necessary for fulfillment of tasks that the NCCSMR is charged with, – in the amount up to ten non-taxable minimum incomes of citizens;
- 2) non-submission or submission of knowingly invalid data – in the amount from ten to fifty non-taxable minimum incomes of citizens;
- 3) non-fulfillment or untimely fulfillment of NCCSMR decisions, violation of the license conditions requirements – in the amount from fifty to one hundred non-taxable minimum incomes of citizens.

The amount of fines imposed on a subject of natural monopolies and economic agent in adjacent markets shall be transferred to the State Budget of Ukraine.

The fine shall be paid by a subject of natural monopolies, economic agent in adjacent markets within thirty days from the date of receipt of the NCCSMR decision on its imposition.

For every day of delay in fine payment, a late fine shall be accrued in the amount of one percent of fine amount.

In case of refusal of the subject of natural monopolies, economic agent in adjacent markets to pay a fine, the amount shall be collected based upon the court decision.

#### **Article 17. Liability of the NCCSMR and Its Officials**

Losses incurred as a result of adoption of illegitimate decisions, actions or inactivity of the NCCSMR violating the norms of this Law shall be subject to recovery according to the procedure envisaged by legislation.

The Chairman and Commissioners of the NCCSMR, as well as its officials shall be liable according to the legislation for violation of the requirements of this Law, other legal acts, non-fulfillment or improper fulfillment of their official duties which resulted in infringement of the rights and interests of the subjects of natural monopolies and economic agents in adjacent markets that are protected by the Law.

#### **Article 18. Court Appeals**

In order to protect the interests of the state, consumers, subjects of natural monopolies and adjacent markets, the NCCSMR may submit appeals to the court on the grounds envisaged by the legislation.

### **Chapter V FINAL PROVISIONS**

1. This Law shall come into effect in six months from the day of its publication.

Until legal acts are brought into compliance with this Law, they shall be valid in so far as they do not conflict with this Law.

2. To establish that the bodies performing functions of state regulation in the sector of communal services shall continue to perform their functions until the NCCSMR is established.

Licenses for performing certain types of activity in the sphere of heat supply, water supply and sanitation issued according to the established procedure prior to the moment this Law comes into effect shall be valid until the terms set in them implying the mandatory fulfillment of the requirements of this Law.

3. Until regulatory legal acts are brought into compliance with this Law, regulatory legal acts shall be applied in so far as it does not conflict with this Law.

4. To amend the following legal acts of Ukraine:

4.1 To introduce the following amendments to the Code of Ukraine on Administrative Violations (Newsletter of the Verkhovna Rada of the UkrSSR, 1984, Appendix to # 51, p. 1122):

4.1.1 To add the following Articles 188<sup>32</sup> and 244<sup>18</sup> to the Code:

**“Article 188<sup>32</sup>. Non-Fulfillment of Legitimate Requirements of the Officials of the National Commission of Communal Services Market Regulation of Ukraine**

Untimely submission of information necessary for fulfillment of tasks that the National Commission of Communal Services Market Regulation of Ukraine is charged with, –

shall entail imposition of a fine on officials of the subjects of natural monopolies and economic agents in adjacent markets in the amount up to ten non-taxable minimum incomes of citizens.

Non-submission to the National Commission of Communal Services Market Regulation of Ukraine or submission of knowingly invalid data by the officials of the subjects of natural monopolies and economic agents in adjacent markets –

shall entail imposition of a fine on officials of the subjects of natural monopolies and economic agents in adjacent markets in the amount from ten to fifty non-taxable minimum incomes of citizens.

Non-fulfillment or untimely fulfillment by the subjects of natural monopolies and economic agents in adjacent markets of decisions of the National Commission of Communal Services Market Regulation of Ukraine, violation of the license conditions requirements –

shall entail imposition of a fine on officials of the subjects of natural monopolies and economic agents in adjacent markets in the amount from fifty to one hundred non-taxable minimum incomes of citizens.

Note. The terms “subjects of natural monopolies” and “economic agents in adjacent markets” shall be used in this Article in the meaning given in the Law of Ukraine “On the National Commission of Communal Services Market Regulation of Ukraine”.

**Article 244<sup>18</sup>. National Commission of Communal Services Market Regulation of Ukraine**

The National Commission of Communal Services Market Regulation of Ukraine shall consider cases on administrative violations envisaged by Article 188<sup>32</sup>.

The Chairman and Commissioners shall be entitled to consider cases on administrative violations and impose administrative sanctions on behalf of the National Commission of Communal Services Market Regulation of Ukraine”;

4.1.2 in section two of Article 255:

in subparagraph one, to replace the numbers “222 - 244<sup>17</sup>” with the numbers “222 - 244<sup>18</sup>”;

to add the following item 18 to this part:

“18) officials of the National Commission of Communal Services Market Regulation of Ukraine”.

4.2 To add the words “electricity engineering, district heating, water supply and sanitation” to paragraph three of Article 4 of the Law of Ukraine “On Prices and Price Setting” (Newsletter of the Verkhovna Rada of Ukraine, 1990, # 52, p. 650; Official Bulletin of Ukraine, 1998, # 12, p. 441; 2003, # 51, p. 2644)

4.3 To add paragraph 48 to section one of Article 4 of Decree of the Cabinet of Ministers of Ukraine №7-93 dated 21 January 1993 “On State Duty” (Newsletter of the Verkhovna Rada of Ukraine, 1993, # 13, p. 113; 2000, #46, p.398, with further amendments) of the following content:

“The National Commission of Communal Services Market Regulation – a plaintiff and defendant – upon lawsuits before a civil court on protection of state interests, interests of subjects of natural monopolies and economic agents acting in adjacent markets in the sphere of district heating, water supply and sanitation, as well as of consumers of services (goods) produced (rendered) by such agents”;

4.4 Subparagraph 2 of paragraph “a” of Article 28 of the Local Self-Government of Ukraine” (Official Bulletin of Ukraine, 1997, # 25, p. 20) shall be amended as follows:

“establishment, according to the procedure and within the limits defined by law, of tariffs for payment of social, communal, transport and other services rendered to relevant categories of consumers”;

4.5 In the Law of Ukraine “On Local State Administrations” (Official Bulletin of Ukraine, 1999, # 18, p. 774):

4.5.1. To amend paragraph 7 of section one of Article 18 as follows:

“7) establishment of tariffs for subjects of natural monopolies regarding which licensing shall be performed”;

4.5.2. To add a new paragraph to Article 20 as follows:

“5) shall define and set rates of housing and communal services consumption, perform control over adherence to them”;

4.6 In the Law of Ukraine “On Natural Monopolies” (Newsletter of the Verkhovna Rada of Ukraine, 2000, # 30, p. 238; 2004, # 12, p. 155):

4.6.1 To add the following subparagraph to section one of Article 4:

“The body for state regulation of activity of the subjects of natural monopolies and economic agents performing activity in adjacent markets in the sphere of water supply and sanitation; district heating supply (except for economic agents that perform combined heat and power production and/or use alternative sources of energy) shall be the National Commission of Communal Services Market Regulation of Ukraine that acts according to the Law of Ukraine “On the National Commission of Communal Services Market Regulation of Ukraine”;

4.6.2 To amend subparagraph 10 of section one of Article 5 as follows: “transportation of heat energy”;

4.6.3 To add a new subparagraph to Article 6 after subparagraph 7: “heat energy supply”;

4.7 In the Law of Ukraine “On Drinking Water and drinking Water Supply” (Official Bulletin of Ukraine, 2002, # 6, p. 223; 2007, # 43, p. 1703):

4.7.1 To exclude subparagraph 9 of section one of Article 11;

4.7.2 To add the following new section to Article 9:

“The National Commission of Communal Services Market Regulation of Ukraine is the body of state regulation of subjects of natural monopolies and economic agents in adjacent markets in the spheres of central water supply and sanitation according to the Law of Ukraine “On Natural Monopolies”;

4.7.3 To add the following words to subparagraph 8 of Article 12:

“provided that such activity shall cover the territory of administrative units with population of not less that 100 000 people”;

4.7.4 To add the following new subparagraph to Article 12:

“establishment of tariffs for subjects of natural monopolies in the sphere of district water supply and sanitation regarding which licensing shall be performed”;

4.7.5 To exclude subparagraphs 7 and 8 from Article 13;

4.7.6 To amend subparagraph 8 of Article 13 as follows:

“ensuring information provision to people regarding drinking water quality and drinking water supply status”;

“calculation of tariffs for district water supply and sanitation services for relevant categories of consumers”;

4.8 To add the following new subparagraph to Article 3 of the Law of Ukraine “On State Regulatory Policy Framework in the Sphere of Economic Activity” (Official Bulletin of Ukraine, 2003, # 41, p. 2157):

“on regulatory acts of bodies of state regulation of natural monopolies and adjacent markets”;

4.9 In the Law of Ukraine “On Housing and Communal Services” (Official Bulletin of Ukraine, 2004, # 30, p. 1985; 2009, # 7, p. 205):

4.9.1 In Article 5:

- in paragraph 4 of section one to exclude the words “establishment of prices/tariffs for housing and communal services”;

- to exclude paragraphs 10 and 12 of section one;

- to amend section three as follows:

“The National Electricity Regulatory Commission of Ukraine and the National Commission of Communal Services Market Regulation of Ukraine are the bodies of state regulation of activity of subjects of natural monopolies and economic agents in adjacent markets in the spheres of electricity engineering, oil and gas complex, district water supply and sanitation according to the Law of Ukraine “On Natural Monopolies”;

4.9.2 To exclude sections two and three from Article 31;

4.10 In the Law of Ukraine “On Heat Supply” (Official Bulletin of Ukraine, 2005, # 27, p. 1532):

4.10.1 In Article 1:

- to exclude subparagraph 2;

- to add the words “, as well as facilities and buildings, main and auxiliary equipment that is used for ensuring safe and reliable operation of heat networks” to subparagraph 8 after the words “heat energy”;

- to replace the words “heat supply (supply of heat energy)” with “the sphere of heat supply” in subparagraph 13;

To amend subparagraphs 13 and 16 as follows:

“the system of autonomous heat supply is an internal house heating system used for heat supply of a separate multifamily house;”;

“district heating system is a combination of heat energy sources, main and local (distribution) heat networks that are combined between themselves and used for heat supply of a consumer, city, and which includes systems of decentralized and moderately centralized heat supply”;

to exclude the words “natural person or” from subparagraph 20;

4.10.2 To exclude the words “moderately centralized, decentralized” from subparagraph 4 of Article 6;

4.10.3 In Article 7:

- to replace the word “decentralized” with “autonomous” in subparagraph 2;

- to amend subparagraph 6 as follows:

“cost reduction during heat energy transportation via main and local (distribution) heat networks by means of implementation of modern types of heat insulation;”;

4.10.4 To add the following new subparagraph to section one of Article 11:

“approval of heat supply schemes to cities with population of more than 20 000 people and of regional programs of heat supply systems modernization;”;

4.10.5 In section three of Article 15:

- in subparagraph 4 to replace the words “central body of executive power” with the words “National Commission of Communal Services Market Regulation of Ukraine”;

- add the following new subparagraph:

“by the Council of Ministers of the Autonomous Republic of Crimea and local state administrations according to the law”;

4.10.6 To add the following subparagraphs after subparagraph 3 to Article 16:

“licensing of activity on production of heat energy (except activity on production of heat energy at plants with combined heat and power production , atomic power plants and/or use alternative sources of energy) in amounts exceeding the level set in conditions and rules for performing economic activity on production

of heat energy (license conditions), heat energy transportation via main heat networks;

approval, according to the prescribed procedure, of license conditions for performing economic activity on production of heat energy (except activity on production of heat energy at plants with combined heat and power production , atomic power plants and/or use alternative sources of energy), heat energy transportation and supply, as well as control over adherence to them;

development and approval of methodology (procedure) for prices/tariffs setting for heat energy in the sphere of district heating;

approval of tariffs to the subjects of natural monopolies in the sphere of district heating that shall undergo licensing;”.

In this respect, subparagraphs 4 through 6 shall be considered as 8 through 10, accordingly;

4.10.7 To add the following Article 16<sup>1</sup> to the Law:

“Article 16<sup>1</sup>. Powers of the Council of Ministers of the Autonomous Republic of Crimea and local state administrations in regulation of activity in heat supply sphere

The powers of the Council of Ministers of the Autonomous Republic of Crimea and local state administrations in regulation of activity in heat supply sphere include:

licensing of activity on production of heat energy (except activity on production of heat energy at plants with combined heat and power production, atomic power plants and/or use alternative sources of energy) in amounts not exceeding the level set in conditions and rules for performing economic activity on production of heat energy (license conditions), heat energy transportation via local (distribution) heat networks and heat energy supply;

approval of tariffs to the subjects of natural monopolies in the sphere of district heating that shall undergo licensing;

performing control, within their competence, over adherence to license conditions.”;

4.10.8 In Article 20:

- to replace the words “except heat energy produced by subjects” with “except tariffs for production of heat energy for subjects” in section three;

- to exclude section eight;

- to add the following sections to the article:

“Bodies of state regulation of activity of subjects of natural monopolies are obliged to adopt a decision on decreasing the tariff established by them by the amount of misused funds in the event of:

use of funds by the economic agent in heat supply sphere for targets and/or in amounts not prescribed in the program of technical development or investment program;

use of funds by the economic agent in heat supply sphere for targets and/or in amounts not stipulated by the tariff structure.”;

4.10.9 To replace the word “decentralized” with “autonomous” in section seven of Article 26;

4.10.10 To replace the words “by the National Electricity Regulatory Commission of Ukraine” with the words “bodies of state regulation” in section three of Article 31”.

5. The Cabinet of Ministers of Ukraine shall:

bring its regulatory legal acts in compliance with this Law and ensure development of regulatory legal acts resulting from this Law;

ensure revision and cancellation of regulatory legal acts that conflict with this Law by ministries and other central bodies of executive power.

## Annex 2

### **EXPLANATORY NOTE**

#### **to the Draft Law of Ukraine**

#### **“On the National Commission of Communal Services Market Regulation of Ukraine”**

Executing Decree of the Cabinet of Ministers of Ukraine № 932-p dated 09.07.2008 “On Approval of the Concept of state regulation system development regarding the activity of natural monopolies in the communal services market”, the Ministry of Housing and Communal Economy of Ukraine has developed a draft Law of Ukraine “On the National Commission of Communal Services Market Regulation of Ukraine”.

#### **1. Justification of the Necessity to Approve the Act**

The specific character of natural monopolies and adjacent markets requires creation and implementation of the effective mechanism of state regulation based upon ensuring the balance between the interests of market players and consumers’ rights protection regarding provision of high quality services at reasonable prices, creating conditions for the effective operation of the subjects of natural monopolies, attracting investments to the development of housing and communal economy etc..

At the same time, the current departmental focus does not facilitate the balance of public interests, results in the infringement of interests of communal services consumers and decrease of sustainability of enterprises, does not ensure effective operation of the subjects of natural monopolies and development of competition in adjacent markets. The subjects of natural monopolies that provide central water, heat supply and sanitation services have considerable material and financial resources, lack competitors and, accordingly, are hardly motivated to reduce the costs of communal services production. At the same time, these subjects of natural monopolies have a guaranteed market for their services. Moreover, the demand for the services of the subjects of natural monopolies is less dependant on their price than the demand for the services of those economic agents that act in competitive markets as irrespective of the services costs consumers having the everyday need in their consumption have to pay at the tariffs proposed to them.

As a result, the rights and interests of consumers are infringed because they have to pay for obtained services at overstated rates due to the fact that the costs which are not directly related to the services are included into these tariffs.

Thus, the establishment of capable state regulation system regarding the activity of natural monopolies in the communal services market is an important management instrument in the sphere of housing and communal services as it is stipulated in the Law of Ukraine “On Natural Monopolies”. The regulatory impact of the state in this sphere should consist of the system of legal organizational structures – regulatory authorities, on the one hand, and the system of legal organizational methods and forms of state administrative impact on relations.

The establishment of the National Commission of Communal Services Market Regulation of Ukraine entitled with the functions of regulation of activity of the subjects of natural monopolies that provide central water, heat supply and sanitation services is the first step and effective way of resolving the issues connected with the improvement of the price setting system in the communal services market that will be able to prevent rapid growth of tariffs for relevant communal services.

## **2.Objectives and Tasks of Adoption of the Act**

The Concept of state regulation system development regarding the activity of natural monopolies in the communal services market was approved by the Decree of the Cabinet of Ministers of Ukraine № 932-p dated 09.07.2008. The Concept stipulates the implementation of a certain range of efforts on the improvement of state regulation of the activity of natural monopolies with the network of territorial offices.

Furthermore, the increase of the efficiency of state regulation and control over the subject of natural monopolies in the communal services market, the necessity to perform the analysis of activity of the subjects of natural monopolies that provide central water, heat supply and sanitation services regarding the transparency of their financial and economic reporting and the control over the issues connected with the establishment and application of tariffs in the communal services market are stipulated by the norms of the Laws of Ukraine “On Natural Monopolies” and “On Heat Supply”, provisions of Decree of President № 853 dated 19.08.1997 “On the Efforts Regarding Implementation of the State Policy in the Sphere of Natural Monopolies” and №921 dated 27.09.2007 “On the Concept of the Improvement of the State Regulation of Natural Monopolies”.

Based upon the premises, the draft Law of Ukraine “On the National Commission of Communal Services Market Regulation of Ukraine” has been prepared.

## **3.General Characteristics and Main Provisions of the Draft Act**

This draft Law is aimed at defining legal framework for the establishment and activity of the National Commission of Communal Services Market Regulation of Ukraine.

This draft Law stipulates that the National Commission of Communal Services Market Regulation of Ukraine (hereinafter – NCCSMR) is a collegial central body of executive power with a special status the activity of which is guided and coordinated by the Cabinet of Ministers of Ukraine.

The main objective of the NCCSMR shall be the execution of state regulation of activity of the subjects of natural monopolies and economic agents in the adjacent markets by means of:

- balance of interests of economic agents, consumers of their goods and services, and the state;

- ensuring transparency and openness in the markets of natural monopolies and adjacent markets;

- protection of rights of the consumers of goods and services with respect to obtaining these goods and services of proper quality and in sufficient amount at economically grounded price, as well as stimulation of their quality increase and satisfaction of demand for them;

- establishment and ensuring predictability of the pricing and tariff policy in the markets which are in state of natural monopoly and adjacent markets, promotion of implementation of incentive price regulation methods;

- ensuring self-sustainability of the subjects of natural monopolies and economic agents in adjacent markets;

- ensuring equal opportunities for access of consumers to the goods (services) in the markets which are in state of natural monopoly;

- restriction of influence of the subjects of natural monopolies on the state policy and promotion of competition in the markets adjacent to the markets which are in state of natural monopoly in order to ensure effective functioning of the relevant sectors.

In the draft Law the key principles of the activity of the NCCSMR, its structure and procedure of establishment, arrangement of activity, powers are defined. It also stipulates the forms and methods of activity, interrelationships of the NCCSMR with the Cabinet of Ministers of Ukraine, other bodies of executive power, as well as local self-government authorities, the responsibility of the subjects of natural monopolies and economic agents in the adjacent markets, the NCCSMR and their officials. The final provisions of the draft Law stipulate amendments to certain laws of Ukraine aimed at bringing them to compliance with the norms of this draft Law.

#### **4. Financial and Economic Justification**

The adoption of the draft Law of Ukraine requires expenditures from the State budget of Ukraine.

## **5. Position of the Interested Authorities**

The draft Law of Ukraine “On the National Commission of Communal Services Market Regulation of Ukraine” has been submitted for approval to the following interested central bodies of executive power:

- Ministry of Fuel and Energy of Ukraine;
- Ministry of Economy of Ukraine;
- Ministry of Finance of Ukraine;
- Ministry of Justice of Ukraine;
- Antimonopoly Committee of Ukraine;
- National Electricity Regulatory Commission of Ukraine;
- State Committee of Ukraine for Regulatory Policy and Entrepreneurship;
- National Agency of Ukraine for Efficient Use of Energy Resources.

## **6. Regional Aspect**

The draft law does not impact the development of administrative units.

## **7. Public Discussion**

The letters of support and proposals regarding the draft Law of Ukraine “On the National Commission of Communal Services Market Regulation of Ukraine” have been received from the following associations:

- Federation of Employers of Ukraine;
- Federation of Trade Unions of Ukraine.

## **8. Forecast of the Results of Adoption of the Act**

The establishment of the National Commission of Communal Services Market Regulation of Ukraine shall have positive social and economic results in the communal services market, namely:

- enhance transparency of tariff (price) setting for the services (goods) of the subjects of natural monopolies;
- enable improvement of the legal framework regarding the procedure of interaction of the subjects of natural monopolies with other economic agents acting in the markets adjacent to the natural monopoly;

- facilitate rendering (producing) communal services (goods) of proper quality and in sufficient amount at economically grounded prices and tariffs.

Minimization of costs of the subjects of natural monopolies in the sphere of central water, heat supply and sanitation services, ensuring the balance of the interests of the subjects of natural monopolies, consumers of their services and economic agents that act in the markets adjacent to the natural monopoly shall have a considerable economic and social effect for the state economy.

**Minister**

**O. Kucherenko**

**CABINET OF MINISTERS OF UKRAINE**

**RESOLUTION**

dated 2009 №

Kyiv

**On Establishment of the National Commission of Communal Services  
Market Regulation of Ukraine**

According to Decree of the Cabinet of Ministers of Ukraine № 932-p dated 09.07.2008 “On Approval of the Concept of state regulation system development regarding the activity of natural monopolies in the communal services market” the Cabinet of Ministers of Ukraine **rules to:**

1. Establish the National Commission of Communal Services Market Regulation of Ukraine (hereinafter – the Commission), assigning the functions of regulation of the activity of subjects of natural monopolies in the communal services market to it.

2. State that the Commission is a collegial central body of executive power, the activity of which is guided and coordinated by the Cabinet of Ministers of Ukraine.

3. State that the main tasks of the Commission are as follows:  
facilitating effective functioning of communal services markets based upon the balance of interests between the public, subjects of natural monopolies and consumers of services produced (sold) by the subjects of natural monopolies in these markets;

licensing of economic activity on district water supply and sanitation on the territory of administrative units with the population of not less than 100 000 natural persons or in the event when the systems of central water supply and sanitation are located on the territory of two or more regions, as well as in case of performance of such activity by joint ventures and enterprises with foreign investments; development

and approval of license conditions and standard form contracts to them, as well as the order of control over adherence to these requirements;

licensing of economic activity on heat production (except production of heat at plants with combined heat and power production and/or use alternative sources of energy) with aggregate capacity of more than 20 Gcal/h, transporting it via main and local (distribution) heat networks and heat supply; development and approval of license conditions and standard form contracts to them, as well as the order of control over adherence to these requirements;

protection of rights of the consumers for goods and services of proper quality and at economically grounded prices and tariffs;

participation in pricing (tariff) policy formation according to the law, development of methodology (procedure) for prices/tariffs setting for communal services;

ensuring equal opportunities for access to services (goods) rendered (produced) by the subjects of natural monopolies;

stimulation of increasing quality of services (goods), facilitation of competition in adjacent markets;

establishment of control over activity of the subjects of natural monopolies and ensuring transparency of their financial and economic reporting.

4. State that the Commission shall be established having five Commissioners including its Chairman.

5. The Ministry of Housing and Communal Economy, Ministry of Finance, Ministry of Economics, National Electricity Regulatory Commission of Ukraine, Antimonopoly Committee and Ministry of Justice shall submit to the Cabinet of Ministers of Ukraine within one month:

1) proposals regarding location, logistics and financial provision and defining the maximum number of employees of the central office of the National Commission of Communal Services Market Regulation of Ukraine;

2) draft Law of Ukraine “On the National Commission of Communal Services Market Regulation of Ukraine”;

3) proposals regarding the amendments to the acts of the Cabinet of Ministers of Ukraine connected with adoption of this resolution.

**Prime Minister**

**Y. Tymoshenko**

## Annex 4

### **EXPLANATORY NOTE**

#### **to the Draft Resolution of the Cabinet of Ministers of Ukraine “ On Establishment of the National Commission of Communal Services Market Regulation of Ukraine ”**

Executing a separate instruction of the GOU’s meeting dated 25 October 2008 (extract from Protocol #56), the Ministry of Housing and Communal Economy of Ukraine has developed a draft resolution of the Cabinet of Ministers of Ukraine “On Establishment of the National Commission of Communal Services Market Regulation of Ukraine”.

#### **9. Justification of the Necessity to Approve the Act**

The specific character of natural monopolies and adjacent markets requires creation and implementation of the effective mechanism of state regulation based upon ensuring the balance between the interests of market players. The bodies of state regulation of natural monopolies are entitled with functions of consumers’ rights protection regarding provision of high quality services at reasonable prices to them, creating conditions for the effective operation of the subjects of natural monopolies, attracting investments to the development of housing and communal economy.

At the same time, in Ukraine such departmental system of regulation of activity of natural monopoly subjects in the sphere of district heat supply, water supply and sanitation exists that stipulates that the Ministry of Housing and Communal Economy performs its own functions, as well as the functions of the national commission of regulation of activity of natural monopoly subjects stated in the Law of Ukraine “On Natural Monopolies”.

Such departmental focus does not facilitate the balance of public interests, results in the infringement of interests of communal services consumers and decrease of sustainability of enterprises, does not ensure effective operation of the subjects of natural monopolies and development of competition in adjacent markets. The subjects of natural monopolies that provide district water supply, heat supply and sanitation services have considerable material and financial resources, lack competitors and, accordingly, are hardly motivated to reduce the costs of communal services production. At the same time, these subjects of natural monopolies have a guaranteed market for their services. Moreover, the demand for the services of the subjects of natural monopolies is less dependant on their price than the demand for the services of those economic agents that act in competitive markets as irrespective of the services costs consumers having the everyday need in their consumption have to pay at the tariffs proposed to them.

As a result, the rights and interests of consumers are infringed because they have to pay for obtained services at overstated rates due to the fact that the costs which are not directly related to the services are included into these tariffs.

Thus, the establishment of a capable state regulation system regarding the activity of natural monopolies in the communal services market is an important management instrument in the sphere of housing and communal services as it is stipulated in the Law of Ukraine “On Natural Monopolies”. The regulatory impact of the state in this sphere should consist of the system of legal organizational structures – regulatory authorities, on the one hand, and the system of legal organizational methods and forms of state administrative impact on relations.

The establishment of an independent body of regulation of the subjects of natural monopolies that provide district water supply, heat supply and sanitation services is an effective way of resolving the issues connected with the improvement of the price setting system in the communal services market that will be able to prevent rapid growth of tariffs for relevant communal services.

#### **10. Objectives and Tasks of Adoption of the Act**

The establishment of the National commission in the housing and communal economy was initially stipulated by paragraph 5 of Decree of President № 853 dated 19.08.1997 “On the Efforts Regarding Implementation of the State Policy in the Sphere of Natural Monopolies”, according to which such commission had to be created in parallel with headcount and budget expenditures reduction for keeping relevant bodies of executive power, as well as clear delineation of administrative functions. The Decree of President stipulated the entitlement of the commission with the functions of implementation of effective tariff setting mechanisms, calculation of costs for rendering heat supply, water supply and sanitation services, establishment of economically grounded rates of heat, water and gas losses; competitive basis in the sphere of housing and communal services provision and receiving payments for these services, development of regulatory legal acts on this issue, separation of heat energy production from its transportation in big cities, creation of competitive relations in heat production, establishment of the system of regulation and control over the activity of appropriate enterprises attracting local self-government authorities, public organizations and people.

The Concept of the state regulation system development regarding the activity of natural monopolies in the communal services market was approved by the Decree of the Cabinet of Ministers of Ukraine № 932-p dated 09.07.2008. The Concept stipulates the establishment of the body of state regulation of the activity of natural monopolies with the network of territorial offices.

Based upon the premises, the draft resolution of the Cabinet of Ministers of Ukraine “On Establishment of the National Commission of Communal Services Market Regulation of Ukraine” has been prepared.

## **11. General Characteristics and Main Provisions of the Draft Act**

The establishment of the National commission of communal services market regulation of Ukraine (hereinafter – the Commission) and its tasks are prescribed by Articles 4, 12 and 14 of the Law Ukraine “On Natural Monopolies”, provisions of Decree of President № 853 dated 19.08.1997 “On the Efforts Regarding Implementation of the State Policy in the Sphere of Natural Monopolies” and №921 dated 27.09.2007 “On the Concept of the Improvement of the State Regulation of Natural Monopolies”.

The draft resolution of the Cabinet of Ministers of Ukraine “On Establishment of the National Commission of Communal Services Market Regulation of Ukraine” complies with the Constitution of Ukraine that has the highest legal power and the norms of which are the norms of direct action, as well as does not contradict the requirements of current legislation.

It is envisaged that the Commission shall be created as an independent state body in the form of the collegial body of executive power. The Commission shall not be subordinate to any of the central bodies of executive power. It shall enable the prevention of negative impact on their activity by power bodies and departmental approach to the regulation of economic agents of different subordination and forms of ownership in the sphere of district water supply, heat supply and sanitation. The Commission shall get the functions of the Ministry of Housing and Communal Economy related to pricing policy formation and communal services markets regulation based upon the balance between the interests of public, subjects of natural monopolies and consumers of services produced (sold) by the subjects of natural monopolies in this sphere.

## **12. Financial and Economic Justification**

It is stipulated that the financing of the Commission shall be performed at the account of budget funds. The establishment of the Commission shall be performed in parallel with headcount reduction of the Ministry of Housing and Communal Economy as the result of transferring certain powers to the Commission, as well as expenditures provided in the State budget of Ukraine for keeping the Ministry, as well as reduction of headcount and expenditures for keeping other central bodies of executive power.

Preliminarily, the expenditures for keeping the Commission shall reach 2M hryvnias (see attached an approximate structure and estimates).

## **13. Position of the Interested Authorities**

The draft resolution has been sent to the interested bodies of executive power, as well as Federation of Trade Unions of Ukraine and Association of Cities of Ukraine for identifying their position.

#### **14. Regional Aspect**

The draft resolution is not related to the issue of the development of administrative units.

#### **7. Public Discussion**

Public discussion of the draft resolution is performed by means of its publication on the official web-site of the Ministry of Housing and Communal Economy in the Internet.

#### **8. Forecast of the Results of Adoption of the Act**

The establishment of the National Commission of Communal Services Market Regulation of Ukraine shall have positive social and economic results in the communal services market, namely:

- enhance transparency of tariff (price) setting for the services (goods) of the subjects of natural monopolies;
- enable improvement of the legal framework regarding the procedure of interaction of the subjects of natural monopolies with other economic agents acting in the markets adjacent to the natural monopoly;
- facilitate rendering (producing) communal services (goods) of proper quality and in sufficient amount at economically grounded prices and tariffs.

Minimization of costs of the subjects of natural monopolies in the sphere of district water supply, heat supply and sanitation services, ensuring the balance of the interests of the subjects of natural monopolies, consumers of their services and economic agents that act in the markets adjacent to the natural monopoly shall have a considerable economic and social effect for the state economy.

**Minister**

**O. Kucherenko**

## Annex 5

### ***LAW OF UKRAINE***

#### **On Amendments to Certain Legal Acts of Ukraine for the Purpose of Ensuring Implementation of Energy Saving (Energy Efficient) Efforts in Multifamily Houses**

Taking into account urgent necessity of energy saving (energy efficient) efforts implementation in multifamily houses, the Verkhovna Rada of Ukraine has ruled:

I. To amend certain legal acts of Ukraine:

**1. In the Civil Code of Ukraine:**

1) In Article 358

Add the following sentence to section one: “The Law can establish another procedure of implementation of common partial property right”.

2) In Article 369

Section one should be amended as follows: “Co-owners of common joint property shall own and use it jointly unless otherwise provided by law or agreement between them”.

**2. In the Law of Ukraine “On Homeowners’ Associations”**

1) The following new section should be added to Article 19 after section four:

“The decisions on implementation of common property right for common and general property, namely the decisions on implementation of energy saving (energy efficient) efforts in a multifamily house, shall be adopted by simple majority of votes of co-owners of a multifamily house”.

Consequently, sections five-six should be considered as sections six-seven.

II. Final Provisions

1) This Law shall come into effect since the day of its publication.

Annex 6

**INQUIRY**  
**on Compliance of Acquis Communautaire**  
**of the Draft Law of Ukraine**  
**“On Amendments to Certain Legal Acts of Ukraine for the Purpose of Ensuring**  
**Implementation of Energy Saving (Energy Efficient) Efforts in Multifamily**  
**Houses”**

The draft law has been developed by the Ministry on Housing and Communal  
Economy of Ukraine

**1. Priority of the draft law**

The draft Law of Ukraine “On Amendments to Certain Legal Acts of Ukraine for the Purpose of Ensuring Implementation of Energy Saving (Energy Efficient) Efforts in Multifamily Houses” does not belong to the priority spheres of adaptation of the legislation of Ukraine to EU legislation defined by the Law of Ukraine “On State Program of Adaptation of the Legislation of Ukraine to the Legislation of European Union”.

**2. The procedure of resolution of issues that belong to the sphere of legal regulation of the draft law in acquis communautaire**

There are no sources of acquis communautaire that regulate relations in the mentioned sphere.

**3. Stocktaking legal analysis**

**4. Expected results**

The implementation of the draft Law of Ukraine “On Amendments to Certain Legal Acts of Ukraine for the Purpose of Ensuring Implementation of Energy Saving (Energy Efficient) Efforts in Multifamily Houses” shall enable an effective mechanism of decision making by co-owners of a multifamily house, in which a HOA has been established, in the sphere of implementation of common ownership right for common property in the house.

**5. General conclusion**

The draft Law of Ukraine “On Amendments to Certain Legal Acts of Ukraine for the Purpose of Ensuring Implementation of Energy Saving (Energy Efficient) Efforts in Multifamily Houses” does not conflict with acquis communautaire.

Minister on Housing and Communal Economy of Ukraine  
O.Kucherenko

\_\_\_\_\_ 2009

**INQUIRY**  
**on Compliance of the Draft Law of Ukraine**  
**“On Amendments to Certain Legal Acts of Ukraine for the Purpose of Ensuring**  
**Implementation of Energy Saving (Energy Efficient) Efforts in Multifamily**  
**Houses” with the provisions of Convention on Protection of Human Rights and**  
**Fundamental Freedoms**

The draft law has been developed by the Ministry on Housing and Communal  
Economy of Ukraine

**1. Connection of the draft Law to the sphere, in which legal relations are regulated by the Convention**

The draft Law of Ukraine “On Amendments to Certain Legal Acts of Ukraine for the Purpose of Ensuring Implementation of Energy Saving (Energy Efficient) Efforts in Multifamily Houses” does not contain norms that touch rights and freedoms guaranteed by the Convention.

**2. The provisions of the Convention which the draft law concerns**

**3. The conclusion of the main developer on the compliance of the draft law with the provisions of the Convention taking into account the practice of EU court on human rights**

The draft Law of Ukraine “On Amendments to Certain Legal Acts of Ukraine for the Purpose of Ensuring Implementation of Energy Saving (Energy Efficient) Efforts in Multifamily Houses” does not conflict with the Convention on Protection of Human Rights and Fundamental Freedoms.

Minister on Housing and Communal Economy of Ukraine  
O.Kucherenko

\_\_\_\_\_ 2009

**EXPLANATORY NOTE**  
**to the Draft Law of Ukraine**  
**“On Amendments to Certain Legal Acts of Ukraine for the Purpose of Ensuring**  
**Implementation of Energy Saving (Energy Efficient) Efforts in Multifamily**  
**Houses”**

**1. Justification of the Necessity to Approve the Act**

According to the Law of Ukraine “On State Program of Adaptation of the legislation of Ukraine to the legislation of European Union” priority spheres of adaptation of the legislation of Ukraine to EU legislation include environment and energy, including nuclear energy. Energy saving sphere, including ensuring energy efficiency of buildings, belongs to energy policy of European Union.

For the purpose of improvement of energy characteristics of buildings EU Directive 2002/91/EC on energy characteristics of buildings was adopted on 16 December 2002 by the European Parliament and the Council.

Aimed at fulfillment of tasks related to adaptation of the legislation of Ukraine to EU legislation the draft Law of Ukraine “On Energy Efficiency of Buildings” has been submitted for consideration to the Verkhovna Rada of Ukraine. It shall envisage implementation of a number of energy efficient (energy saving) efforts for increasing energy efficiency of buildings, namely multifamily residential houses where homeowners’ associations (hereinafter – HOA’s) are established.

The Law of Ukraine “On Homeowners’ Associations” (Article 19) stipulates that co-owners of a multifamily house exercise common ownership for common property of co-owners of a multifamily house. The Law of Ukraine “On Homeowners’ Associations” does not contain a separate procedure of exercising the common ownership right of co-owners of a multifamily house. So exercising the common ownership right shall be performed based upon the provisions of the Civil Code of Ukraine (Articles 358 and 369), according to which the common partial ownership right shall be exercised by co-owners with their consent, while the co-owners of common joint property own and use it jointly unless otherwise established by agreement between them.

The application of the mentioned provisions of the Civil Code of Ukraine means that co-owners of a multifamily house with a HOA can take decisions concerning common property of a multifamily house, namely, in the sphere of energy efficient (energy saving) efforts implementation, only unanimously, which practically prevents decision making in multifamily houses.

**2. Aim and ways of its achievement**

The aim of development of the draft law is providing an opportunity of decision making on common property, including the sphere of implementation of energy efficient (energy saving) efforts, for co-owners of a multifamily house.

For this purpose, it is proposed to enable for co-owners of a multifamily house to exercise common ownership right for common property in a multifamily house by means of adopting decisions having a simple majority of homeowners' votes.

In order to prevent conflicts between the provisions of the Law of Ukraine "On Homeowners' Associations" and the Civil Code of Ukraine, it is proposed to amend also Articles 358 and 369 of the Civil Code of Ukraine that should allow establishing another procedure of exercising a common ownership right by law.

### **3. Legal Aspects**

At present, general procedure of exercising a common ownership right is established by Articles 358 and 369 of the Civil Code of Ukraine. Special provisions regarding exercising a common ownership right by co-owners of a multifamily house with a HOA are absent.

The proposed draft law envisages defining a special mechanism of decision making by co-owners of a multifamily house with a HOA in the sphere of exercising a common ownership right for common property. It is also proposed to amend Articles 358 and 369 of the Civil Code of Ukraine for the purpose of providing an opportunity to establish another procedure of exercising a common ownership right by law.

### **4. Financial and Economic Justification**

The adoption of the draft Law of Ukraine "On Amendments to Certain Legal Acts of Ukraine for the Purpose of Ensuring Implementation of Energy Saving (Energy Efficient) Efforts in Multifamily Houses" does not require expenditures from the State budget of Ukraine.

### **5. Position of the Interested Authorities**

### **6. Public Discussion**

### **7. Regional Aspect**

The draft law does not concern the development of administrative units.

### **8. Forecast of the Social, Economic, Legal and Other Results of Adoption of the Act**

The adoption of the draft Law of Ukraine "On Amendments to Certain Legal

Acts of Ukraine for the Purpose of Ensuring Implementation of Energy Saving (Energy Efficient) Efforts in Multifamily Houses” shall become an important step on the way of implementing energy saving (energy efficient) efforts in multifamily houses where HOA’s are established because an effective mechanism of decision making by co-owners of a multifamily house shall be established.

Minister on Housing and Communal Economy of Ukraine  
O.Kucherenko

\_\_\_\_\_ 2009

Annex 9

**COMPARISON TABLE**  
**to the Draft Law of Ukraine “On Amendments to Certain Legal Acts of Ukraine for the Purpose of Ensuring Implementation of Energy Saving (Energy Efficient) Efforts in Multifamily Houses”**

	Content of the provision (norm) of current legislation	Content of the appropriate provision (norm) of a proposed draft law
1	<p>Civil Code of Ukraine            Article 358 Exercising common partial ownership right            1. Common partial ownership right shall be exercised by co-owners with their consent.</p>	<p>Civil Code of Ukraine            Стаття 358 Exercising common partial ownership right            1. Common partial ownership right shall be exercised by co-owners with their consent.            The Law can establish another procedure of exercising common partial ownership right.</p>
2	<p>Civil Code of Ukraine            Article 369 Exercising common joint ownership right            1. Co-owners of common joint property own and use it jointly unless otherwise established by agreement between them.</p>	<p>Civil Code of Ukraine            Стаття 369 Здійснення права спільної сумісної власності            1. Co-owners of common joint property own and use it jointly unless otherwise established by law or agreement between them.</p>
3	<p>Law of Ukraine “On Homeowners’ Associations”            Article 19 Common property of co-owners of a multifamily house              Common property of co-owners of a multifamily house shall consist of undivided and common property.              Undivided property shall be common joint property of co-owners of a multifamily house. Undivided property is not subject to alienation.              Common property shall be common partial property of co-owners</p>	<p>Law of Ukraine “On Homeowners’ Associations”            Article 19 Common property of co-owners of a multifamily house              Common property of co-owners of a multifamily house shall consist of undivided and common property.              Undivided property shall be common joint property of co-owners of a multifamily house. Undivided property is not subject to alienation.              Common property shall be common partial property of co-owners of</p>

	<p>of a multifamily house.</p> <p>Owners of premises shall own, use and, within the limits established by this Law and civil legislation, dispose common property.</p> <p>During alienation of premises in a residential house, the right for part of undivided property shall be subject to alienation together with the premises without allocation of the part in kind.</p> <p>Objects of common ownership right can be transferred for use by a natural person or legal entity, or a group of persons in the event if it is not connected with infringement of rights and interests of other co-owners of undivided and common property that are protected by law.</p>	<p>a multifamily house.</p> <p>Decisions on exercising common ownership right for common property, namely, decisions regarding implementation of energy saving (energy efficient) efforts, shall be adopted by a simple majority of votes of co-owners of a multifamily house.</p> <p>Owners of premises shall own, use and, within the limits established by this Law and civil legislation, dispose common property.</p> <p>During alienation of premises in a residential house, the right for part of undivided property shall be subject to alienation together with the premises without allocation of the part in kind.</p> <p>Objects of common ownership right can be transferred for use by a natural person or legal entity, or a group of persons in the event if it is not connected with infringement of rights and interests of other co-owners of undivided and common property that are protected by law.</p>
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Minister on Housing and Communal Economy of Ukraine  
O.Kucherenko

\_\_\_\_\_ 2009

**Comments**  
**to the draft Law of Ukraine**  
**“On Special Features of Leasing and Concession of Communal District Water**  
**and Heating Supply and Sanitation Facilities”**

**Submitted by the People’s Deputies of Ukraine V. Rybak and O. Popov**

**№ 2320 dated 03.04.2008**

In the draft Law it is proposed to define special features of transfer for leasing and concession of district water and heating supply and sanitation facilities (hereinafter – facilities) that are communal property, as well as peculiarities of performing leasing and concession of such facilities.

The draft Law specifies a range of facilities: a legal entity or natural person – sole proprietor that have positive experience of performing such kind of activity can be leasers.

As opposed to the norms of the Law of Ukraine “On Lease of State and Communal Property” that envisage only the possibility of tender announcement regarding the right for lease, the draft law contains a norm regarding transfer of the facility for lease exclusively through holding a tender, defines the procedure of a tender for the right of obtaining facilities for lease or concession.

In addition to the essentials of a lease or concession contract envisaged by the Laws of Ukraine “On Lease of State and Communal Property” and “On Concessions” the draft law stipulates additional essentials of a lease or concession contract including:

- amounts and terms of making investments necessary for renovation and modernization of a facility under concession/lease according to tender conditions;
- fulfillment of requirements by a leaser/concessioner regarding rendering appropriate communal services in the amount set by the contract and of proper quality according to the conditions prescribed in the lease/concession contract till the moment of return of facilities;
- ensuring fulfillment of license conditions of performing certain activity, as well as state standards, norms and rules that act in the sphere of district water supply, heat supply and sanitation;
- conditions of tariffs revision for goods and services produced/rendered by a leaser/concessioner according to the license;

- safety conditions of facilities under concession/lease;
- repayment schedule of debts arising prior to transfer of the facility for lease/concession;
- obligation regarding development of a business plan on break-even activity and technical development program of an enterprise by a concessioner/leser and their approval by authorities empowered to take decisions on transfer of facilities for lease/concession.

It is worth mentioning that the necessity of defining special features of leasing and concession at the legislation level is caused by social importance of facilities and their monopoly status. At the same time, communal water supply, heat supply and sanitation facilities require investments for modernization and renovation so adoption of the draft law acquires major significance.

Taking into account the importance of the mentioned draft law, we consider it necessary to provide the following remarks and proposals to it.

I. As most of water supply, heat supply and sanitation facilities are natural monopolies and their activity has major social significance, we propose to exclude natural persons – sole proprietors from the list of possible lesers because, in our opinion, such person will not be able to fulfill high requirements to the activity of water supply, heat supply and sanitation facilities.

II. In our opinion, it is necessary to elaborate the mechanism of compensation for improvements cost, both divisible and indivisible (procedure, terms etc.) to a leaser/concessioner or refer to the body that should adopt such mechanism.

III. We consider that standard form lease contracts should be approved by the central body on housing and communal economy rather than by local self-government authorities as stipulated by the Law Ukraine “On Lease of State and Communal Property”.

IV. Taking into consideration that:

- the Law of Ukraine “On Privatization of State Property” № 2163-XII dated 4 March 1992 (regulating also the issues of property alienation) abandons privatization of networks, facilities, equipment connected with water, gas, heat supply to consumers, as well as sanitation and wastewater purification;
  - the Law Ukraine “On Lease of State and Communal Property” № 2269-XII dated 10 April 1992 abandons lease of facilities that are not subject to privatization;
  - the Law Ukraine “On Concessions” № 997-XIV dated 16 July 1999 states that state or communal objects of right can be subject to concession, these are the facilities used in such spheres of economic activity as water supply, sanitation and wastewater purification; services connected with heat supply to consumers;
- the final provisions of the draft law should include the norms regarding amendments to the above mentioned legal acts for the purpose of clearer definition which facilities can be subject to lease or concession: all water supply, heat supply and sanitation

facilities including natural monopolies or only those which are not subject to restriction of privatization or lease.

## Annex 11

### **Reforming Legislation of Ukraine on HOA's as Necessary Condition for Increasing Energy Efficiency of Multifamily Residential Houses**

A Homeowner's Association is an important participant in relationships in the sphere of energy efficiency of buildings (Under the Law of Ukraine "On Energy Efficiency of Buildings" (reg. №4457 dated 12.05.2009)).

- A HOA is a customer of a building energy certificate
- Existence of a HOA is one of the conditions for providing state support for implementation of energy saving (energy efficient) efforts in a multifamily house

#### **Energy Saving (Energy Efficient) Efforts**

*Under the Law of Ukraine "On Energy Efficiency of Buildings"  
(reg. №4457 dated 12.05.2009)*

Increasing energy efficiency of buildings is provided by means of:

- 1) thermal insulation of building envelopes;
- 2) energy saving windows installation;
- 3) roof repair;
- 4) repair and renovation of ventilation, heating, conditioning and lighting systems
- 5) installation of:
  - house service meters for metering fuel and energy consumption;
  - sun collectors for heat water supply ;
  - heat pumps;
  - energy efficient boilers on fossil fuel instead of old boilers or inefficient central heat supply systems;
- 6) installation and modernization of individual heat supply stations with the use of the systems of automatic regulation of heat capacity and boilers replacement;
- 7) implementation of other energy saving (energy efficient) efforts.

#### **Financing of Energy Saving (Energy Efficient) Efforts in Buildings**

*Under the Law of Ukraine "On Energy Efficiency of Buildings"  
(reg. №4457 dated 12.05.2009)*

1. Financing sources of energy saving (energy efficient) efforts in buildings include:

- building owners;
- investors;
- state budget;
- local budgets etc.

2. Objects of state support of energy saving (energy efficient) efforts include:

- a building where state and local authorities are located, as well as public buildings of state and communal ownership;
- apartments in multifamily residential houses;
- existing multifamily residential houses provided that they have a HOA or house cooperative established;
- existing and new detached (single apartment) residential houses.

**Financing Sources of Energy Saving (Energy Efficient) Efforts in Multifamily Residential Houses**

Financing sources of energy saving (energy efficient) efforts in multifamily residential houses include:

- apartment owners (co-owners of a multifamily house);
- HOA's;
- Investors;
- state budget;
- local budgets etc.

**Presence of special norms on financing of energy saving (energy efficient) efforts in the current Law on HOA's and draft Law on HOA's**

<b>Law on HOA's</b>	<b>Draft Law on HOA's</b>
Absent	The State, bodies of executive power, local self-government authorities perform state support of establishment and activity of a HOA by means of : <i>providing high-priority assistance in financing of energy saving efforts;</i> (Paragraph 4, Section 1 of Article 3)

**Resources of HOA's as financing source of energy saving (energy efficient) efforts**

Law on HOA's	Draft Law on HOA's
<p><b>Resources of a HOA:</b></p> <ul style="list-style-type: none"> <li>• Balances on accounts of a previous property owner;</li> <li>• Statutory fees, mandatory payments;</li> <li>• Money obtained by a HOA from leasing auxiliary premises;</li> <li>• Subsidies;</li> <li>• Income as the result of activity of enterprises founded by a HOA;</li> <li>• Voluntary fees.</li> </ul> <p><b>Funds of a HOA:</b></p> <ul style="list-style-type: none"> <li>• Renovation fund;</li> <li>• Reserve fund;</li> <li>• Special funds.</li> </ul>	<p><b>Resources of a HOA:</b></p> <ul style="list-style-type: none"> <li>• Balances on accounts of a previous property manager (balance holder) intended for house maintenance;</li> <li>• Statutory fees, mandatory payments;</li> <li>• Money obtained by a HOA from leasing auxiliary premises;</li> <li>• Subsidies and benefits for payments for housing and communal services;</li> <li>• Income as the result of activity of enterprises founded by a HOA;</li> <li>• Voluntary fees;</li> <li>• Money from the state and local budgets obtained as co-financing for house maintenance and renovation;</li> <li>• Other passive income.</li> </ul> <p><b>Funds of a HOA:</b></p> <ul style="list-style-type: none"> <li>• Special funds of a HOA.</li> </ul>

**Problems of Taking Loans for Implementation of Energy Saving (Energy Efficient) Efforts**

- Lack of clear regulation of issues related to ownership for multifamily house property, as a result – the problem of liquid assets as pledge;
- No credit history of a HOA;
- Lack of qualified staff in a HOA.

**Types of Property in a Multifamily House**

*(Under the Current Law on HOA's)*

- Private property of co-owners of a multifamily house (privatized apartments);
- State or communal property (non-privatized apartments and non-residential premises);

- Common property – part of auxiliary premises of a housing complex that can be used for their intended purpose under the terms of by-laws of a HOA (pantries, garages, including underground ones, workshops etc.) – is common partial property of co-owners of a multifamily house;
- Undivided property – undivided part of a housing complex that consists of part of auxiliary premises, structural elements, technical equipment of a house – is common joint property of co-owners of a multifamily house.
- Property owned by an association.

### **Types of Property in a Multifamily House**

*(Under the Draft Law on HOA's)*

- Private property of co-owners of a multifamily house (privatized apartments and non-residential premises);
- State or communal property (non-privatized apartments and non-residential premises);
- Undivided property – auxiliary property that is common partial property of co-owners of a multifamily house (a land plot that belongs to the housing complex, including house territory, auxiliary premises of general use, structural elements and technical equipment of a multifamily house, as well as facilities, buildings designed for ensuring proper living conditions for all homeowners and use of non-residential premises);
- Property owned by an association.

### **Problems of HOA's Participation in Civil Legal Relations under the General Regulations of Common Partial Ownership for Undivided Property**

- Problems of exercising the right of common ownership (need for agreement of all co-owners for exercising the right of common partial ownership);
- Lack of a single subject responsible for the house in whole;
- Issues regarding participation of HOA's in legal relations aimed at implementation of energy saving (energy efficient) efforts (taking loans, ordering works and services);
- Issues related to formalization of the right of common partial ownership.

### **Possible Ways of Resolving the Issues**

- While establishing a HOA, undivided property shall become the property of a HOA;

- Undivided property shall be transferred to a HOA for management, with the possible implementation of trust ownership;
- The term “condominium” (Lat. *con* – together and *dominium* – ownership) shall enter the legislation as a specific type of common ownership for undivided property with special regulations.