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**MUNICIPAL HEATING
REFORM IN UKRAINE**

MUNICIPAL HEATING REFORM PROJECT (MHR)

Interim Report

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

April 2010

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REPORT

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

I. The working materials dedicated to the perspectives of further work over the Draft Law of Ukraine “On Energy Efficiency of Buildings” have been prepared including the latest tendencies of the EU legislation development in this sphere, the main issues arising in the process of consideration of the draft law by central bodies of executive power and committees of the Verkhovna Rada of Ukraine, as well as the comments of the Central Scientific Experts Office of the Verkhovna Rada of Ukraine.

II. 7 April 2010 – a working meeting of the JurEnergConsulting experts O. Samborska and Y. Vashchenko, Project Deputy Chief of Party A. Mitskan, and representatives of the Municipal Development Institute I. Slobodenyuk and D. Levytsky took place in MDI’s office. At the meeting the issues concerning the further work over the following Draft Laws of Ukraine were discussed: “On Homeowners’ Associations”, “On State Regulation in the Sphere of Housing and Communal Services”, “On the National Commission of Communal Services Market Regulation of Ukraine”, “On Energy Efficiency of Buildings”, and draft National Heating Strategy of Ukraine.

III. 9 April 2010 – JurEnergConsulting expert Y. Vashchenko took part in the meeting of the experts group on increasing energy efficiency of buildings that was held in the Ministry of Housing and Communal Economy of Ukraine chaired by Deputy Minister O. Mazurchak. At the meeting the following issues were discussed: informational mechanisms of energy saving projects promotion based upon the example of TeploDoma.org, technology of using a hydro/heat/sound insulating cover Isofran on building envelopes, energy auditors training within Municipal Heating Reform Project of USAID.

IV. 14 April 2010 – the working meeting of the experts of Municipal Heating Reform Project of USAID with Deputy Minister of housing and communal economy O. Mazurchak took place. At the meeting JurEnergConsulting expert Y. Vashchenko presented the results of stocktaking of current legislation of Ukraine in the sphere of heat energy metering, and informed about the current status of consideration of the Draft Law of Ukraine “On Energy Efficiency of Buildings” including the key issues to be considered during improvement of this draft law. O. Mazurchak informed that improvement and

submission of the Draft Law of Ukraine “On Energy Efficiency of Buildings” to the VRU is one of the primary tasks of the Ministry.

V. 23 April 2010 – the working meeting of the experts of Municipal Heating Reform Project of USAID with Deputy Minister of housing and communal economy O. Mazurchak took place. It was devoted to the discussion of the key issues to be considered during preparation of the Draft Law of Ukraine “On Energy Efficiency of Buildings”.

**Comments to the Conclusion
of the Central Scientific Experts Office of the Verkhovna Rada of Ukraine Secretariat
Related to the Draft Law “On Energy Efficiency of Buildings” Including the Comments of Experts
of Municipal Heating Reform Project, USAID**

Provision of the Draft Law	Comments of the Central Scientific Experts Office of the VRU	Comments of Experts of Municipal Heating Reform Project, USAID
<p>This Law shall stipulate legal, economic and organizational framework for ensuring energy efficiency of residential, office and public buildings.</p>	<p>According to the Law’s preamble, it shall stipulate the framework for ensuring energy efficiency of residential, office and public buildings. Thus, it does not concern the issue of energy efficiency of industrial buildings, although one cannot doubt that the energy efficiency of this category of buildings is topical today.</p>	<p>One of the key tasks of developing this Draft Law includes the adaptation of the legislation of Ukraine in the sphere of energy efficiency of buildings to the requirements of EU legislation in this sphere. On December 16th, 2002 the European Parliament and the Council of the European Union approved Directive №2002/91/EC on energy performance of buildings. Particularly, the directive draws attention to the fact that the residential and tertiary sector, the major part of which is buildings, accounts for more than 40 % of final energy consumption in the Community and is expanding, a trend which is bound to increase its energy consumption and hence also its carbon dioxide emissions. Regarding residential buildings, the directive emphasizes the necessity of billing that is calculated in proportion to actual consumption (i.e. based on meter reading) because building owners and occupants should be enabled to regulate their own consumption of heat, hot water and other resources. The directive focuses on energy efficiency of state and public authority buildings as they should be illustrative.</p>

		<p>Indicating the importance of ensuring energy efficiency of industrial buildings, one should consider the special features of this sector as compared to energy efficiency in public and tertiary sector which requires special mechanisms of legal regulation. Therefore, these issues have to be regulated in the framework of other legal acts. The experience of EU Member States supports this conclusion.</p> <p>Thereby, the remark of the Central Office that the Draft Law should cover industrial buildings is considered inexpedient by us.</p>
<p>4) a residential building – a multifamily residential house, detached (one apartment) residential house, and a dormitory;</p>	<p><i>On Article 1</i> According to the draft, <i>a residential building – a multifamily residential house, detached (one apartment) residential house, and a dormitory</i> (P.4, Part 1, Article 1). This definition should be compliant with the provisions of the current Housing Code of the Ukrainian SSR, with respect to service dwelling etc. (Article 4 of the Code). Pursuant to the Code, <i>housing stock includes living buildings and living premises in other buildings...</i> This means that</p>	<p>We find it unreasonable to refer to the provisions of the Housing Code of the Ukrainian SSR based upon the following arguments. Public relations in housing sector have changed drastically since the Housing Code of the Ukrainian SSR came into effect. Therefore, many norms of the Housing Code of the Ukrainian SSR are obsolete and cannot play the role of the effective regulator in modern public relations in this sector. Over the years of Ukrainian independence a number of legal acts related to housing sector have been adopted. These are the Civil Code of Ukraine, The Laws of Ukraine “On Privatization of National Housing Facilities”, “On Housing and Communal Services”, “On Cooperation”, “On Social Housing Fund”, “Financial and Credit Mechanisms and Property Administration in Housing construction and Operations with Real Estate” etc. Therefore, the provisions of the Housing Code of the Ukrainian</p>

	<p>there are residential premises at the hospitals, sanatoriums, boarding schools, and so on. So such dwelling should be considered in the term <i>residential building</i>.</p>	<p>SSR are effective to the extent that they do not contradict later legal acts and modern conditions of public and state existence.</p> <p>In view of the aforesaid, the term “residential building” is defined in the Draft Law on the basis of the Civil Code of Ukraine and other legal acts adopted over the years of Ukrainian independence rather than the Housing Code of the Ukrainian SSR.</p> <p>In particular, we would like to draw your attention that in the Civil Code of Ukraine the terms “residential building”, “residential house” are used instead of “living house” used in the Housing Code of the Ukrainian SSR.</p> <p>In Article 379 of the Civil Code of Ukraine the term “housing” is defined. Thus, this Articles states that a natural person’s housing is a house, apartment or another dwelling intended and adapted for permanent living in them. Temporary lodging attached to hospitals, sanatoriums, boarding schools do not fall within the category “housing”.</p>
<p>Article 5. State management in the sphere of energy efficiency of buildings</p> <p>1. State management in the sphere of energy</p>	<p><i>On Article 5</i></p> <p>Pursuant to the Draft Law, <i>state management in the sphere of energy efficiency of buildings, within the powers prescribed by legislation, shall be preformed by the Cabinet of Ministers of Ukraine and other bodies of executive</i></p>	<p>The Draft Law defines organizational and legal framework for ensuring energy efficiency of buildings, namely the main principles of state policy in this sphere, the system of authorized bodies of state management and their powers. The respective bodies of executive power are the authorized bodies of state management. The powers of local self-government bodies in different spheres are defined in a special legal act – the Law of Ukraine “On Local Self-Government in Ukraine”. In this respect,</p>

<p>efficiency of buildings, within the powers prescribed by legislation, shall be preformed by the Cabinet of Ministers of Ukraine and other bodies of executive power.</p> <p>The authorized bodies of state management in the sphere of energy efficiency of buildings include the central body of executive power on implementation of the state policy in the sphere of housing and communal economy, central body of executive power on implementation of the state regional policy in the sphere of construction, architecture, and city development, central body of executive power on implementation of the state policy in the</p>	<p><i>power.</i> For the purpose of compliance with Article 3 of the given Draft Law, it would be expedient to define the role of local self-government bodies in this provision as they approve “local target programs for ensuring energy efficiency of existing residential, office, and public buildings”.</p>	<p>in the final provisions of this Draft Law it is suggested to amend the Law of Ukraine “On Local Self-Government in Ukraine” in order to specify their powers in the sphere of energy efficiency of buildings.</p>
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<p>sphere of efficient use of energy resources and energy saving.</p>		
<p>Article 6. Powers of the Cabinet of Ministers of Ukraine in the sphere of energy efficiency of buildings</p> <p>1. In the sphere of energy efficiency of buildings the Cabinet of Ministers of Ukraine shall:</p> <p>1) ensure the implementation of the state policy;</p> <p>2) ensure development and implementation of state target programs;</p> <p>3) guide and coordinate the work of ministries, and other bodies of executive power;</p>	<p><i>On Articles 6, 7, 8, 9, 10</i></p> <p>The mentioned articles define the powers of the Cabinet of Ministers of Ukraine and central bodies of executive power in the sphere of energy efficiency of buildings. The provisions stipulate that all central bodies of executive power submit proposals for the development of state target programs, but it is not clear which body shall develop them. We consider that the respective provisions should be compliant with the provisions of the Law of Ukraine “On State Target Programs”.</p> <p>According to the Draft Law, <i>the central body of executive power on implementation of the state</i></p>	<p>In the first place, P. 2 Part 1 of Article 6 of the Draft Law stipulates that the Cabinet of Ministers of Ukraine shall ensure development and implementation of state target programs.</p> <p>In the second place, the procedure of development, approval and implementation of state target programs is covered by the Law of Ukraine “On State Target Programs” and is not the subject of regulation of this law.</p> <p>The given comment is caused by the misinterpretation of P.6 Part 1 of Article 7 of the Draft Law. The given provision sets forth the powers of the central body of executive power on implementation of the state policy in the sphere of housing and</p>

<p>4) perform other functions prescribed by law.</p> <p>Article 7. Powers of the central body of executive power on implementation of the state policy in the sphere of housing and communal economy in the sphere of energy efficiency of buildings</p> <p>1. The central body of executive power on implementation of the state policy in the sphere of housing and communal economy shall:</p> <p>1) develop and submit the proposals on formation of the state policy in the sphere of energy efficiency of buildings to the Cabinet of Ministers of Ukraine;</p>	<p><i>policy in the sphere of housing and communal economy shall... perform control over equipping of existing residential buildings with the heat consumption meters and regulators (P. 6 Part 1 of Article 7).</i> This provision should be elaborated as the practical control over the engineering equipment of residential houses is performed by the housing service providers, so the primary control (information collection, monitoring) over equipping of buildings shall be probably performed by housing service providers as well.</p> <p>Such elaboration could be adjusted similar to the provisions of Article 17 of the same Draft Law stipulating that <i>monitoring of energy performance of existing buildings shall be performed by the central body of executive power on implementation of the state policy in the sphere of housing and</i></p>	<p>communal economy to perform control over equipping of existing residential buildings with the heat consumption meters and regulators. We would like to emphasize that the Ministry of Housing and Communal Economy of Ukraine is vested with such power according to the current legislation. Pursuant to Sub-paragraph 14 P. 4 of the Regulation on the Ministry of Housing and Communal Economy of Ukraine adopted by Resolution №717 of the Cabinet of Ministers of Ukraine dated 12.05.2007, the Ministry shall implement energy saving efforts, including the equipping of residential buildings with the water and heat consumption meters and regulators.</p>
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<p>2) take part on the development of state target programs in the sphere of energy efficiency of buildings;</p> <p>3) develop and submit draft legal acts in the sphere of energy efficiency of existing residential buildings to the Cabinet of Ministers of Ukraine according to the established procedure;</p> <p>4) develop and approve standards, norms and rules in the sphere of energy efficiency of existing residential buildings within its competence;</p> <p>5) ensure, within its powers, the implementation of energy saving (energy efficiency) efforts in</p>	<p><i>communal economy... on the basis of information provided by the local self-government bodies.</i></p>	
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existing residential buildings;

6) perform control over equipping of existing residential buildings with the heat consumption meters and regulators;

7) issue regulatory legal acts on energy efficiency of existing residential buildings, including together with other central bodies of executive power;

8) perform other powers prescribed by law.

Article 8. Powers of the central body of executive power on ensuring implementation of state regional policy and policy in the sphere of construction, architecture and urban development in

the sphere of energy efficiency of buildings

1. The central body of executive power on ensuring implementation of state regional policy and policy in the sphere of construction, architecture and urban development shall:

1) submit proposals on establishment of state policy in the sphere of energy efficiency of new buildings to the Cabinet of Ministers of Ukraine;

2) participate in development of state target programs in the sphere of energy efficiency of buildings;

3) develop and submit draft legal acts in the sphere of energy efficiency of new

buildings to the Cabinet of Ministers of Ukraine according to the established procedure;

4) develop and approve standards, norms and rules in the sphere of energy efficiency of new buildings within its competence;

5) issue regulatory legal acts on energy efficiency of new buildings and buildings subject to major repairs and reconstruction, including together with other central bodies of executive power;

6) perform other powers prescribed by law.

Article 9. Powers of the central body of executive power on ensuring implementation of state

policy in the sphere of efficient use of energy resources and energy saving in the sphere of energy efficiency of buildings

1. The central body of executive power on ensuring implementation of state policy in the sphere of efficient use of energy resources and energy saving shall:

1) submit proposals on establishment of state policy in the sphere of energy efficiency of existing non-residential buildings;

2) participate in development of state target programs in the sphere of energy efficiency of buildings;

3) ensure interaction with other central bodies of executive power concerning performance of their powers in the sphere of energy efficiency of buildings for the purpose of implementation of a single technical policy in this sphere;

4) develop and submit draft legal acts in the sphere of energy efficiency of existing non-residential buildings to the Cabinet of Ministers of Ukraine according to the established procedure;

5) develop and approve standards, norms and rules in the sphere of energy efficiency of existing non-residential buildings within its competence;

6) issue regulatory legal acts on energy efficiency of existing non-residential buildings, including together with other central bodies of executive power;

7) perform other powers prescribed by law.

Article 10. Powers of the Council of Ministers of the Autonomous Republic of Crimea, regional, Kyiv and Sevastopol city state administrations in the sphere of energy efficiency of buildings

1. In the sphere of energy efficiency of buildings the Council of Ministers of the Autonomous Republic of Crimea, regional, Kyiv and Sevastopol city state administrations shall:

<p>1) participate in development of state target programs in the sphere of energy efficiency of buildings and ensure their implementation;</p> <p>2) develop, submit for approval by respective councils, as well as ensure implementation of local target programs in the mentioned sphere;</p> <p>3) ensure implementation of energy saving (energy efficiency) efforts in buildings;</p> <p>4) inform people about the issues of energy efficiency of buildings;</p> <p>5) perform other powers prescribed by law.</p>		
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<p>Article 11. Factors to be considered during establishment of minimum requirements to energy performance of buildings</p> <p>1. During establishment of minimum requirements to energy performance of buildings the following factors should be considered:</p> <ol style="list-style-type: none"> 1) type of a building; 2) designated purpose of a building; 3) building lifetime; 4) technical state of a building; 5) climate conditions; 6) structural qualities of transparent constructions, heating, hot water supply, air 	<p><i>On Articles 11 and 12</i></p> <p>The list of factors to be considered during establishment of minimum requirements to energy performance of buildings is not complete; furthermore, we think it should have more specific character, especially with respect to the fact that these factors are actually the basis for setting minimum requirements. For instance, the availability of forced ventilation in residential buildings should be added to the mentioned list (Part 1 of Article 11). Most rooms of old housing stock do not have forced ventilation. Installing modern air-tight “energy saving windows” in such rooms (P. 2 Part 1 of Article 16) with glass units changes the climate in the room drastically, increases humidity, which facilitates mold growth and negatively impacts people’s health. This forces people to keep the</p>	<p>The comment is unjustified due to the following. Article 11 of the draft “Law Factors to be considered during establishment of minimum requirements to energy performance of buildings” has been developed according to the requirements of Directive №2002/91/EC including the experience of EU Member States on its implementation. The experience of the mentioned states shows that the fundamentals for setting minimum requirements to energy performance of buildings are defined at the legislative level, while specific minimum requirements are established by the state bodies at the regulatory level. Thus, the given Article provides the list of key factors that needs to be taken into account by the Cabinet of Ministers of Ukraine during development of minimum requirements to energy performance of buildings.</p>
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<p>conditioning, ventilation systems, inbuilt lighting equipment and the building in whole;</p> <p>7) geometric, thermal qualities of building envelopes, space planning parameters;</p> <p>8) orientation of a building;</p> <p>9) passive solar energy systems and sun protection;</p> <p>10) natural ventilation;</p> <p>11) natural lighting;</p> <p>12) optimum indoor climate conditions, including those ones according to the designed indoor climate.</p> <p>2. Establishing minimum requirements to energy performance of</p>	<p>windows in half-open state, which does not promote energy saving in winter period. The Draft Law gives reference to such factor as the construction performance of ventilation (P.6 Part 1 of Article 11) that should be further elaborated. The draft should take into account the existence of ventilation, availability of forced ventilation (central electric exhaust fan), and existence of draft ventilation. The importance of this factor (existence of modern ventilation) for energy efficiency of buildings causes incorporation of the section concerning equipping of residential buildings with forced ventilation to state and local target programs (Article 3 of the Draft Law).</p> <p>In fact, the minimum</p>	
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<p>buildings, one should take into account the possibility to use:</p> <ol style="list-style-type: none"> 1) active solar energy systems and other heating and electric systems based on non-conventional and renewable sources of energy; 2) electrical power produced by means of combined generation of heat and electric power; 3) systems of district and block heating and air conditioning. <p>Article 12. Establishment of minimum requirements to energy performance of buildings</p> <p>1. Minimum requirements to energy performance of buildings,</p>	<p>requirements to energy performance of buildings are not defined in the Draft Law, while Part 1 of Article 12 states that these requirements and the procedure of their establishment are approved by the Cabinet of Ministers of Ukraine. Thus, the whole Article 11 of the Draft Law has only formal character.</p>	
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as well as methodology of their establishment shall be approved by the Cabinet of Ministers of Ukraine.

2. Minimum requirements to energy performance of buildings shall be reviewed at least once in five years and have to take into account new technologies in construction.

3. Minimum requirements to energy performance of buildings shall not cover cultural heritage and buildings having total area of less than 50 sq. m.

4. Minimum requirements to energy performance of new buildings having total area of more than 1,000 sq. m shall be established taken

into account the possibility to use:

1) decentralized energy supply system based on non-conventional and renewable sources of energy;

2) system of combined generation of heat and electric power;

3) district heating or air conditioning system;

4) heat pump (if possible).

5. During establishment of minimum requirements to energy performance of existing buildings having total area of more than 1,000 sq. m, the mandatory implementation of energy saving (energy efficiency) efforts bringing energy

<p>performance of such building in compliance with minimum requirements to energy performance shall be stipulated in the event of reconstruction or major repairs.</p>		
<p>Article 14. Energy audit of buildings</p> <p>1. Energy audit of buildings shall be held for the purpose of defining compliance of actual/estimated energy performance of existing buildings with minimum requirements to energy performance of buildings, as well as providing recommendations regarding implementation of energy saving (energy efficiency) efforts and their technical end economic justification.</p>	<p><i>On Article 14</i></p> <p>The text of this Article can be simpler. The Draft Law states that <i>energy audit of buildings shall be held according to the procedure defined by law</i> (part 4 of Article 14). Taking into account the fact that energy audit of buildings is part of energy audit, this provision duplicates the norm of the Law of Ukraine “On Energy Saving” according to which <i>the procedure of energy audit shall be defined by law</i> (Part 2, Article 24-1). At the same time, it is not clear how Part 4 of Article 14 of the Draft Law should come into effect because the Draft Law “On Energy Audit” ((№ 1036 dated 27.11.2007) is only</p>	<p>The Central Office points to the fact that the provision if Part 4 of Article 14 of the Draft Law duplicates the reference norm of the Law of Ukraine “On Energy Saving” stipulating that the procedure of energy audit shall be defined by law. At present, the Draft Law “On Energy Audit” ((№ 1036 dated 27.11.2007) is only under consideration in the Verkhovna Rada of Ukraine. According to the conclusion of the Central Office, this Draft Law also needs improvement.</p> <p>The given comment of the Central Office is justified based upon the following arguments.</p> <p>Defining energy performance of buildings and performing energy certification of buildings by independently qualified and/or accredited experts ensured by EU Member States belong to the key requirements of Directive №2002/91/EC. EU Member States implement this requirement in their national legislation. Based upon the analysis of EU Member States experience, the developer of the mentioned Draft Law suggested different options for defining the procedure of training and accreditation of experts on energy efficiency of buildings within this Draft Law.</p>

<p>2. A report shall be composed as the result of energy audit of buildings.</p> <p>3. The reported recommendations regarding implementation of energy saving (energy efficiency) efforts shall include:</p> <p>1) detailed description of given efforts (calculations, schemes, specification);</p> <p>2) estimation of technical and economic efficiency (capital costs, annual saving, capital costs payback period) of such efforts that can be implemented;</p> <p>3) methodology of calculating actual saving of fuel and energy resources.</p> <p>4. Energy audit of buildings shall be held</p>	<p>under consideration in the Verkhovna Rada of Ukraine.</p>	<p>However, in the process of approval of the Draft Law by other bodies of executive power, namely, the State Committee for Regulatory Policy and National Agency for Efficient Use of Energy Resources, the respective provisions of the Draft Law were excluded from its text. It was decided that the issue of energy audit of buildings should belong to the subject of regulation of the Draft Law of Ukraine “On Energy Audit”.</p> <p>According to the experience of EU Member States, the calculation of energy performance of buildings and energy certification of buildings do not belong to the activity of energy auditors alone. As a rule, the range of energy efficiency experts includes other experts too. The competence of experts on energy efficiency of buildings and the requirements to their qualification, professional training, accreditation and/or licensing etc. depend on the type of buildings, type of expert activity and so on. In this respect, it would be logically justified to include the provisions concerning the experts on energy efficiency of buildings to the Draft Law.</p> <p>At the same time, during consideration of this issue it is necessary to take into account the key trends of the development of EU legislation in the sphere of energy efficiency of buildings. At present, it is agreed to amend Directive №2002/91/EC “On Energy Efficiency of Buildings”. Pursuant to the suggestions prepared by the European Commission and approved by the Council of the European Union, it is proposed to improve the wording of Article 10 (or 17 in the new version) of the Directive</p>
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<p>according to the procedure defined by law.</p>		<p>devoted to independent experts. The new version stipulates that the EU Member States shall ensure that the certification of energy efficiency of buildings and inspection of heating and air-conditioning systems is performed independently by qualified and accredited experts that are self-employed or work for state authorities or private enterprises. Accreditation of experts should be performed taking into account their competence and independence. At the same time, EU Member States should publish the information on trainings and accreditation, as well as provide access for public to regularly updated lists of qualified an/or accredited experts, or a regularly updated list of companies that propose services of such experts.</p> <p>Concerning the inclusion of energy auditors to certification and inspection processes, the European Commission emphasizes that several Member States restrict the accreditation of experts by specific professional groups or companies that cannot guarantee their competence, and prohibit some other experienced professionals, e.g. ESCOs and energy agencies to enter this market, which limits competition.</p> <p>Furthermore, amendments to the Directive envisage the requirement concerning the system of independent control over energy efficiency certificates and reports on the inspection of heating and air-conditioning systems (Article 18).</p> <p>Thus, we consider it necessary to improve the provision of the Draft Law with the respect of the requirements regarding professionals authorized to perform energy certification of</p>
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		buildings, inspection of heating and air-conditioning systems, as well as the systems of independent control over the quality of such services.
<p>Article 15. Energy certification of buildings</p> <p>1. An energy certificate of a new building shall be composed by a design organization and included to the design documentation with respect to fulfillment of requirements to energy saving and building energy efficiency assessment.</p> <p>2. An energy certificate of an existing building shall be composed by an agent on energy audit of buildings as the result of energy audit that shall be held upon request of a building owner or their authorized body, a</p>	<p><i>On Article 15</i></p> <p>Concerning energy certification of buildings, this Article states that the <i>payment amount for performing energy audit/ assessment of energy efficiency of a building, as well as for issuing a building energy certificate shall be contractually defined</i> (Part 10 of Article 15). In the opinion of the Central Office, it is necessary to define the parties and essentials of such contract in the article. The Law shall envisage the fundamentals for defining the payment amount.</p>	<p>According to the experience of EU Member States, the payment amount for performing energy audit/ assessment of energy efficiency of a building, as well as for issuing a building energy certificate is contractually defined. It means that the prices are contractually defined and not regulated by the state.</p> <p>Taking into account the premises, the Draft Law stipulates the contractual introduction of payment for energy audit/ energy performance calculation and energy certification of buildings. At the same time, a contract's form and content arise from general regulations of civil legislation and do not require special regulation within this Draft Law.</p> <p>However, several States take measures to minimize people's expenses for these works (namely, the Netherlands) or define the ceiling price for people (e.g. in Hungary the payment for energy certification of single-family houses and individual apartments cannot exceed 50 Euro).</p> <p>In this respect we find expedient to review the possibility to regulate the ceiling price for people within the Draft Law.</p>

<p>homeowners' association, housing association or local self-government authority.</p> <p>3. It shall be prohibited to perform reconstruction, major repairs of existing buildings, as well as alienation or rent of buildings/apartments without a building energy certificate. Notary officers shall verify the availability of a building energy certificate confirming agreements on alienation or rent of buildings/apartments.</p> <p>4. During energy certification of buildings agents on energy audit of buildings and design organizations shall apply national standards in the sphere of energy efficiency</p>	<p>The grounds for prohibiting alienation or rent of buildings/apartments without an energy certificate are not defined. We draw your attention to the fact that the owners of such buildings and apartments get severely dependant on the bodies that should issuer energy certificates of buildings. At the same time, the liability of such bodies for untimely fulfillment of their functions is not defined. We consider that the implementation of the norms of Part 3 of Article 15 in the given version can result in considerable financial losses of the owners of buildings/apartments in the situations of blocking their contracts on alienation or rent of their property due to the absence of energy certificates, as well as to corruption.</p>	<p>One of the main requirements of EU Directive 2002/91/EC is obligatory availability of an energy certificate of a building in case of its construction (for new buildings), major renovation, alienation or rent. EU Member States independently determine the ways to ensure adherence to this requirement. The best way to check the availability of a building energy certificate in the event of alienation or rent is the moment of contract's conclusion. Thus, the Draft Law stipulates that no alienation or rent contract is possible without an available energy certificate. Control over adherence to this requirement is imposed on notary. With regard to arranging energy certification of buildings, the Draft Law stipulates the main organizational and legal basis of this process. Detailed requirements should be developed at regulatory level. With intent to avoid issues in interpreting the above mentioned provisions of the Draft Law, we propose to amend Article 15 of the Draft Law by the following Section: "12. The procedure of energy certification of buildings is approved by the Cabinet of Ministers of Ukraine".</p>
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of buildings.

5. An energy certificate of a building shall include:

- 1) owner's data;
- 2) location;
- 3) designated purpose;
- 4) total area;
- 5) energy efficiency class;
- 6) technical and energy performance of building envelopes and engineering systems;
- 7) minimum requirements to energy performance of a building;
- 8) estimated baseline consumption of fuel and energy resources;
- 9) actual/ estimated energy performance of

<p>compared to minimum requirements to energy performance of buildings</p> <p>10) recommendations regarding implementation of energy saving (energy efficiency) efforts (in brief);</p> <p>11) certificate number and issuance date;</p> <p>12) information about an agent on energy audit of buildings or design organization issued a building energy certificate;</p> <p>13) other data prescribed in the law.</p> <p>6. The form of an energy certificate and procedure of its issuance shall be approved by the joint decision of authorized state management bodies in the sphere of energy</p>		
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efficiency of buildings.

7. Energy certification of buildings shall be performed with the help of special software, basic requirements to which shall be approved by the joint decision of authorized state management bodies in the sphere of energy efficiency of buildings.

8. In office, public buildings, as well as in multifamily houses an extract from a building energy certificate shall be posted in conspicuous place near the central entrance into the premises. The list of data presented in such extract shall be approved by the joint decision of authorized state management bodies in the sphere of energy efficiency

<p>of buildings depending on the building type.</p> <p>9. A building energy certificate shall be valid within 10 years.</p> <p>10. The payment amount for performing energy audit/ assessment of energy efficiency of a building, as well as for issuing a building energy certificate shall be contractually defined.</p> <p>11. Data in a building energy certificate shall not be the basis for housing and communal services cost calculation.</p>		
<p>Article 18. Financing sources of energy saving (energy efficient) efforts</p> <p>1. Financing sources of energy saving (energy</p>	<p><i>On Article. 18</i></p> <p>The Article sets forth that <i>financing sources of energy saving (energy efficiency) efforts shall include building owners, investors, state budget, local budgets etc.</i> In this respect, the Central Office</p>	<p>The Draft Law defines only the main organizational and legal framework for increasing energy efficiency of buildings. The specific financial mechanisms of implementation of energy saving (energy efficiency) efforts in buildings, including those which attract the funds of state and local budgets, shall be defined in state and local target programs, acts of budget legislation (first</p>

<p>efficiency) efforts shall include building owners, investors, state budget, local budgets etc.</p>	<p>emphasizes that the explanatory note to the Draft Law lacks the evaluation of state budget expenditures for the mentioned purposes. On the contrary, it is stated that the adoption of the Draft Law shall result in considerable savings of budget funds in mid-term perspective.</p>	<p>of all, in the Law on State Budget for the next year). Taking into account the premises, financing of energy saving efforts at the expense of the state budget is not planned at the stage of adoption of this Draft Law. Thus, the evaluation of state budget expenditures has not been performed.</p>
<p>Article 19. Forms of state support of energy saving (energy efficiency) efforts</p> <p>1. State support of energy saving (energy efficiency) efforts shall be performed by means of:</p> <p>1) financing at the expense of the state budget, including the mechanism of easing of credit;</p> <p>2) loans at the expense of</p>	<p><i>On Article 19</i></p> <p>Part 3 of this Article stipulates providing state loan guarantees. The Central Office reminds that according to P.1 of Article 17 of the Budget Code of Ukraine providing such guarantees is performed within the budget on a reward basis. Besides, the sources of loans repayment are not defined.</p>	<p>Pursuant to Article 19 of the Draft Law providing state loan guarantees is one of the forms of state support of the energy saving (energy efficient) measures. The Draft Law does not define state guarantees mechanism. Specific financial mechanisms of taking energy saving (energy efficient) measures in buildings, including the use of state guarantees, will be defined in state target programs, acts of budget legislation (primarily, in the Law on State Budget for the relevant year).</p>

<p>the state budget;</p> <p>3) state-guaranteed loans;</p> <p>4) using funds saved due to energy saving (energy efficiency) efforts in buildings where the bodies of state power are located for bonuses of employees of these bodies and capital costs.</p>		
<p>Article 20. Objects of state support of energy saving (energy efficiency) efforts</p> <p>1. Objects of state support of energy saving (energy efficiency) efforts shall include:</p> <p>1) buildings where state and local self-government authorities are located, as</p>	<p><i>On Article 20</i></p> <p>It is necessary to clarify the inclusion of “apartments in multifamily buildings” to the objects of state support of energy saving (energy efficiency) efforts, while the “existing multifamily residential houses” are included to these objects provided that they have a HOA or housing cooperative established.</p>	<p>With regard to the Central Office’s remark, it is necessary to provide the following explanations. While defining the objects of state support, the experience of EU Member States (namely, Bulgaria and Slovakia) in taking energy saving (energy efficient) measures was used. Foreign experience proves that complex implementation of energy saving efforts in a multifamily house is more effective. However, it is possible only when there is an effective owner of the building. In this case the subjects raising funds for implementation of energy saving efforts are homeowners’ associations (associations, condominiums etc.) or their authorized persons. Financial and credit mechanisms used in Slovakia can be provided as an example. In those countries where the ownership issues of homeowners at multifamily houses are</p>

<p>well as public buildings of state and communal ownership;</p> <p>2) apartments in multifamily residential houses;</p> <p>3) existing multifamily residential houses provided that they have a HOA or housing cooperative established;</p> <p>4) existing and new detached (single apartment) residential houses.</p>		<p>not clearly regulated, for the interim period it is more reasonable to support apartment owners in implementing energy saving efforts (e.g. windows replacement, thermal insulation of walls etc.). Bulgaria is an example of the second option. Since the ownership issue of homeowners at multifamily houses is under reform in Ukraine (particularly, the Draft Law “On Homeowners’ Associations” (new revision) is registered in the Verkhovna Rada of Ukraine), it is more reasonable to use the experience of Slovakia and Bulgaria, stipulating the support of both apartments and multifamily houses (provided that HOA’s are created).</p>
<p>Article 21. Terms of state support of energy saving (energy efficiency) efforts</p> <p>1. State support of energy saving (energy efficiency) efforts shall be provided at the expense of</p>	<p><i>On Article 21</i></p> <p>The provision of the Article is not fully compliant with Article 95 of the Constitution of Ukraine, according to which only the Law of State Budget of Ukraine shall define the state expenditures for social needs, the amount and designated purpose of these expenditures.</p>	<p>The provisions of Article 21 don’t contradict the Constitution of Ukraine. Pursuant to Article 95 of the Constitution, only the Law on State Budget defines state expenditures for social needs, their amount and designated purpose. It means that the specific amount and assignment of budget funds are defined in the Law on State Budget for the relevant year.</p> <p>Article 21 does not define specific state expenditures, their amount and designated purpose. This article stipulates only general conditions for providing state support. Particularly, it</p>

<p>the state budget only in the event of co-financing by local budgets and other sources according to state and local target programs in the sphere of energy efficiency of buildings. The amount of funds aimed at state support of energy saving (energy efficiency) efforts shall be defined according to state and local target programs in the sphere of energy efficiency of buildings and shall not exceed 20 percent of cost of efforts envisaged by the given programs.</p> <p>2. State support of energy saving (energy efficiency) efforts shall be provided only if:</p> <p>a building energy</p>		<p>stipulates that the amount of funds for energy saving (energy efficient) efforts support is defined in accordance with state and municipal target programs related to energy efficiency of buildings. This amount shall not exceed 20% of the cost of efforts stipulated by mentioned programs. This provision entirely complies with the Law of Ukraine “On State Target Programs”. Particularly, according to Article 9 of this Law a Draft state target program should contain the justification of state budget funding, the list of funding amounts and sources (breakdown by years), the calculation of funding amounts and identification of funding sources for a program, including the funds of State budget of Ukraine (breakdown by years).</p>
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<p>certificate is available;</p> <p>building level meters of fuel and energy consumption are installed in the building;</p> <p>at least 20 percent saving of fuel and energy resources is reached as the result of implementation of the mentioned efforts, which shall be proved according to the procedure established by law.</p>		
<p>Article 22. Aim of promotion of energy saving (energy efficiency) efforts</p> <p>1. The aim of promotion of energy saving (energy efficiency) efforts in buildings shall be joining efforts of their owners, tenants, investors, bodies of</p>	<p><i>On Article 22</i></p> <p>It is necessary to specify whom and according to which procedure the authorized bodies provide information of the issues listed in P.1 of Part 2 of this Article.</p>	<p>Article 22 of the Draft Law is dedicated to identifying the goal and main measures aimed at promotion of energy saving (energy efficient) efforts. The provision that caused the Central Office's remark was laid down in the author's version in the following way: authorities <u>provide the explanation</u> of mentioned issues <u>to people</u>. However, in the process of the Draft Law's consideration in the Cabinet of Ministers of Ukraine this provision was laid down in the version that was submitted to the Verkhovna Rada of Ukraine. Therefore, we consider the Central Office's remark justified and propose to elaborate the provision and lay it down in the version proposed before: Providing the</p>

<p>state power and local self-government authorities related to increasing energy efficiency of buildings.</p> <p>2. For the purpose of energy saving (energy efficiency) efforts promotion authorized bodies of state management in the sphere of energy efficiency of buildings shall:</p> <p>1) provide information related to:</p> <ul style="list-style-type: none"> economic feasibility of implementation of such efforts in buildings; technical aspects of such efforts implementation; impact of energy efficiency of buildings on city ecology; world tendencies and 		<p>explanation of issues listed in Paragraph 1, Part 2 of this Article.</p>
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practices in the sphere of increasing energy efficiency of buildings;

necessity of timely payment for consumed fuel and energy resources as the most important factor of energy supply reliability;

2) develop and distribute guidance materials related to energy efficiency of buildings;

3) prepare feature stories in mass media, as well as specialized TV and radio programs and videos on energy efficiency of buildings;

4) share experience of projects implementation in the sphere of increasing energy efficiency of buildings in Ukraine and abroad;

<p>5) arrange contests, seminars, round tables concerning energy efficiency of buildings;</p> <p>6) arrange web portals and call centers for the purpose of providing consultations to people concerning implementation of energy saving (energy efficiency) efforts in residential buildings.</p>		
<p>add the following part to Article 96:</p> <p>“Performing design, construction, reconstruction or major repairs of buildings without compliance with minimum requirements to energy performance of buildings –</p> <p>shall entail imposition of a fine on citizens from fifty to one hundred non-taxable</p>	<p>Amendments to Article 96 of the Code on Administrative Violations of Ukraine suggested in the Draft Law are an example of excessive elaboration of an action that is considered as administrative violation.</p> <p>Non-compliance with minimum requirements to energy performance of buildings during design, construction, reconstruction or major repairs is completely covered by Part 1 of Article 96 of</p>	<p>The Central Office’s remark that the act proposed to entail administrative liability is covered by Article 96 is reasonable. However, we consider it necessary to insist on the author’s version for the following reasons. The requirements to energy performance of buildings are new and adherence to them plays a very important role in ensuring the principles of sustainable development. Therefore, the author’s proposal cannot be considered as the excessive itemization of the act. With intent to draw the building industry agents’ attention to the necessity to adhere to these requirements, defining administrative liability for such act in a separate section of Article 96 is expedient and justified.</p>

<p>minimum incomes of citizens, on officials – from one hundred to one hundred fifty non-taxable minimum incomes of citizens.”;</p>	<p>the Code and does not require additional description in a separate part of this Article.</p>	
<p>add the following part to Article 96¹:</p> <p>“Issuing a permit for construction works, issuing a certificate of compliance of a constructed facility with design documentation, state standards and building code in the event when energy performance of a building is not compliant with minimum requirements to energy performance of buildings – shall entail imposition of a fine on officials from one hundred to one hundred fifty non-taxable minimum incomes of citizens.”;</p>	<p>The content of a part in which it is suggested to amend Article 96¹ of the Code on Administrative Violations needs improvement. The action stipulated in this part should be delineated from abuse of authority or position, i.e. a criminal act envisaged in Article 364 of the Criminal Code of Ukraine.</p> <p>In Central Office’s opinion, a qualified criterion for such delineation can include the absence of considerable damage to rights, freedoms and legal interests of separate citizens, state/public interests or interests of legal entities.</p>	<p>Pursuant to Section 2 of Article 9 of the Code on Administrative Violations of Ukraine administrative liability for violations stipulated by this Code accrues if these violations are not criminally liable by their character according to law.</p> <p>Pursuant to Section 1 of Article 364 of the Criminal Code of Ukraine a criminal act is abuse of authority or position, i.e. willful, arising from interested motives or other personal/third parties’ interests, use of authority or position in violation of duty <u>if it inflicted considerable damage to rights, freedoms and legal interests of separate citizens, state/public interests or interests of legal entities.</u></p> <p>Therefore, such criterion of delineation between an administrative violation and criminal act proposed by the Central Office is already used in legislation.</p>

<p>add the following part to Article 96¹:</p> <p>“Issuing a permit for construction works, issuing a certificate of compliance of a constructed facility with design documentation, state standards and building code in the event when energy performance of a building is not compliant with minimum requirements to energy performance of buildings –</p> <p>shall entail imposition of a fine on officials from one hundred to one hundred fifty non-taxable minimum incomes of citizens.”;</p>	<p>Issuing a permit for construction works, issuing a certificate of compliance of a constructed facility with design documentation, state standards and building code belong to the competence of a collegial body. It is not clear how a specific person – a subject of this violation – shall be defined.</p>	<p>Pursuant to Article 14 of the Code on Administrative Violations of Ukraine public officials are administratively liable for violations connected with noncompliance with the rules of administrative order control, protection of state and public order, nature, people’s health and other rules which constitute their duties.</p> <p>In accordance with Section 2 of Article 2 of the Law of Ukraine “On State Service” public officials are heads and deputy heads of state authorities and their secretariats, as well as other government employees having organizational/administrative and advisory functions under laws or other regulatory legal acts.</p> <p>The procedure of granting permits for construction, issuing a certificate of compliance of the completed construction object with the design documents, state standards, building regulations is regulated by the Law of Ukraine “On Planning and Development of Territories” and regulatory acts adopted on its basis.</p> <p>Pursuant to Section 2 of Article 29 of this Law a permit for construction is issued by the inspections of architecture and construction control.</p> <p>In accordance with the Regulation on state architectural and construction control adopted by CMU’s Resolution №225 dated 25.03.1993, with further amendments, granting to building owners (developers) and registration of permits for new construction, rehabilitation, restoration, overhaul objects, urban</p>
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objects development belong to the functions of the State Architecture and Construction Inspection and its regional bodies (State Inspections of Architecture and Construction Control).

Pursuant to the Regulation on the State Architecture and Construction Inspection adopted by Resolution of the Cabinet of Ministers of Ukraine №1434 dated 18.10.2006, the State Architecture and Construction Inspection is a governmental body of state management that belongs and is subject to the Ministry of Regional Development and Construction. The State Architecture and Construction Inspection shall issue permits for new construction, rehabilitation, development and technical re-equipment of enterprises (construction works) for building owners (developers), as well as register them according to the established procedure.

A State Architecture and Construction Inspection shall be managed by its Head assigned and dismissed by the Cabinet of Ministers of Ukraine as advised by the Minister of Regional Development and Construction. The Head of State Architecture and Construction Inspection shall sign the orders of the State Architecture and Construction Inspection and arrange control over their execution.

The powers of State Inspections of Architecture and Construction Control are defined in detail in Resolution of the Ministry of Regional Development and Building №317 dated 19.11.2007 which adopted the Regulation on State Inspections of Architecture and Construction Control in the Autonomous

		<p>Republic of Crimea, regions, Kyiv and Sevastopol.</p> <p>Pursuant to Paragraph 7 of this Regulation State Inspections of Architecture and Construction Control, within their competence, issue organizational/ administrative orders and monitor their execution. A State Inspection of Architecture and Construction Control shall be managed by its Head assigned and dismissed by the Minister of Regional Development and Building as advised by the Head of the State Architecture and Construction Inspection (Paragraph 9 of the Regulation). According to Paragraph 11 of the Regulation it is the Head of State Inspection of Architecture and Construction Control who shall sign the orders of the State Inspection of Architecture and Construction Control and arrange control over their execution.</p> <p>The procedure of issuing a permit for construction is defined in the Regulation on the procedure of issuing a permit for construction adopted by Order of the State Committee of Construction, Architecture and Housing Policy №273 dated 05.12.2000. The form of a permit for construction is contained in Annex 2 to this Regulation. In accordance with the established form, the Head of the State Inspection of Architecture and Construction Control shall sign a permit for construction.</p> <p>In accordance with Part 1 of Article 30-1 of the Law of Ukraine “On Planning and Development of Territories”, the acceptance of completed construction objects is performed on the basis of the compliance certificate issued by State Inspections of Architecture and Construction Control.</p>
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		<p>The main requirements and conditions of completed construction objects acceptance are defined in the Completed Construction Objects Acceptance Commissioning Procedure, adopted by Resolution of the Cabinet of Ministers of Ukraine №923 dated 08.10.2008. Pursuant to P.2 of this Procedure, the acceptance of completed construction objects shall be performed on the basis of compliance certificate issued by the State Architecture and Construction Inspection and its regional bodies (in the form according to Annex 1).</p> <p>In order to get a compliance certificate, a developer or their authorized person shall apply in written form according to Annex 2 to the inspection that issued a permit for construction works or an inspection located in the same location as the completed construction object if the construction works did not require a permit.</p> <p>An application shall include:</p> <ul style="list-style-type: none">design documentation approved according to the procedure established by law;act of the readiness of the object for the operation signed by the general planner and general contractor, subcontractors that performed construction, building owner, insurance company (in the event a facility is insured) in the form according to Annex 3. <p>As the result of reviewing the application with the attached documents, as well as a final inspection, the inspection shall adopt a decision to grant a compliance certificate or reject it within two working days.</p>
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		<p>A compliance certificate shall be signed by the Head of the inspection or Deputy Head.</p> <p>Therefore, a State Inspection of Architecture and Construction Control is a body of <u>individual</u> rather than joint decision making. Thus, the Head (Deputy Head) of inspection bears responsibility for appropriate performance of its functions related to granting permits for constructions and compliance certificates.</p>
<p>add the following part to Article 96¹:</p> <p>“Issuing a permit for construction works, issuing a certificate of compliance of a constructed facility with design documentation, state standards and building code in the event when energy performance of a building is not compliant with minimum requirements to energy performance of buildings – shall entail imposition of a fine on officials from</p>	<p>Defining the amount of the administrative fine, one should take into account the requirements of Article 53 of the Criminal Code of Ukraine. In this Article the amount of fines for criminal acts is defined between thirty to one thousand non-taxable minimum incomes of citizens.</p> <p>However, in the part of the Draft Law that stipulates amendments to the Code on Administrative Violations of Ukraine the fine amounts considerably exceed the minimum amount of fines for criminal acts.</p> <p>Thus, the practice of strict</p>	<p>Concerning determination of the fine imposed by administrative law, we would like to emphasize that the institute of administrative liability in Ukraine requires general reforming. At the moment most administrative fines do not comply with modern conditions. First of all, it concerns the amounts of fines. The criteria of delineation between criminal acts and administrative violations also need improvement. Certainly it is not possible to solve such global and complex problems within this Draft Law. However, defining a fine amount for an administrative violation, one should be guided by a preventive function of legal liability implying prevention of performing such violations in the future by both guilty persons and other citizens. Please note that such approach to solving this issue has been used in domestic legislation for a long time, and is not implemented by the Draft Law as the Central Office concluded. Thus, pursuant to Section 2 of Article 53 of the Criminal Code of Ukraine the amount of fine is determined depending on the gravity of</p>

<p>one hundred to one hundred fifty non-taxable minimum incomes of citizens.”;</p>	<p>punishment for an administrative violation compared with the liability for a criminal act is implemented.</p>	<p>violation and property state of a guilty person starting from 30 to 1000 non-taxable minimum incomes of citizens unless a bigger amount of fine is stipulated by the articles of the Special part of the Code. The Draft Law stipulates setting administrative fines in the amount of 50 to 150 non-taxable minimum incomes of citizens. For instance, the current version of Article 96 of the Code on Administrative Violations of Ukraine stipulates administrative fines in the amount of 10 to 250 non-taxable minimum incomes of citizens, i.e. exceeding the minimum amount of fine for criminal acts.</p>
	<p>Final provisions of the Draft Law introduce amendments to a range of legal acts of Ukraine. For the purpose of compliance of such amendments with the requirements of the Rules of procedure of the Verkhovna Rada of Ukraine, it is necessary to add a comparison table to the Draft Law that shall <i>contain the version of respective provisions... of the current law and its new version with the consideration of suggested amendments</i> (Part 6 of Article 91 of the Rules of procedure).</p>	<p>The new Rules of procedure of the Verkhovna Rada of Ukraine were adopted by the Law of Ukraine on 10.02.2010 №1861–VI.</p> <p>According to Part 8 of Article 9, if the implementation of the submitted draft law after its adoption requires amendments to other laws, such amendments should be set forth in the section “Transitional provisions” of this draft law or in a separate draft law submitted simultaneously by the initiator. It should include the list of laws and other regulatory legal acts adoption or revision of which is necessary for the implementation of the provisions of the draft law in the event of its adoption.</p> <p>So the section title “Final Provisions” should be replaced with “Transitional Provisions”.</p> <p>According to Part 6 of Article 91 of the Rules of procedure of the Verkhovna Rada of Ukraine, the draft law on amendments to</p>

		<p>laws should include a comparison table containing the version of respective provisions (articles, parts, paragraphs, sub-paragraphs etc.) of the current law and its new version with the consideration of suggested amendments.</p> <p>We consider it necessary to provide the following explanation concerning this comment. The Draft Law does not include a comparison table because this Draft Law is not a draft law on introduction of amendments to laws. This is a draft of a new Law of Ukraine.</p> <p>However, taking into account the comment of the Central Office, we consider it necessary to prepare a comparison table.</p>
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