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**MUNICIPAL HEATING  
REFORM IN UKRAINE**

# MUNICIPAL HEATING REFORM PROJECT (MHR)

INTERIM REPORT  
ON THE STATUS OF CONSULTING SUPPORT WITHIN  
THE PROJECT

**March 2011**

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# MUNICIPAL HEATING REFORM PROJECT (MHR)

## INTERIM REPORT ON THE STATUS OF CONSULTING SUPPORT WITHIN THE PROJECT

ENERGY II IQC, TASK ORDER 9  
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March 2011

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## REPORT

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

I. The Stocktaking of the current legal provision of the system of housing subsidies has been performed (Annex 1).

II. The Report on the results of the analysis of the current and perspective tax legislation of Ukraine on tax incentives for energy saving and energy efficiency efforts has been prepared (Annex 2).

III. According to the Plan of providing consulting support to the National Electricity Regulatory Commission of Ukraine, the Analysis of regulatory legal support of the activity of the national commission of communal services market regulation of Ukraine regarding the use of its administrative and economic sanctions imposed on economic agents that violate the legislation in heat supply sphere has been performed (Annex 3).

IV. JurEnergоConsulting experts held the following working meetings:

on 14 March the meeting with NERC commissioner Valeriy Kalchenko was held regarding the discussion of the draft Procedure of submission, approval and implementation of investment programs in the heat supply sphere, as well as further consulting support of the regulatory body;

on 16 March the working meeting with ASE experts was held regarding the discussion of the Concept of improvement of the legislation of Ukraine in the sphere of metering and regulation of heat energy used for communal services provision and Stocktaking of draft regulatory legal acts connected with the heating sphere prepared by JurEnergоConsulting;

on 21 March the working meeting with an expert of the Municipal Development Institute was held regarding the arrangement of work on social protection of needy citizens.

## STOCKTAKING OF THE CURRENT LEGAL PROVISION OF THE SYSTEM OF HOUSING SUBSIDIES

### 1. The system of housing subsidies as a component of the state system of social protection

The system of subsidies is a component of the state system of social protection. *The system of social protection* is a set of organizational, legal and economic efforts aimed at protection of welfare of each member of the society in specific economic conditions<sup>1</sup>.

The state *social provision* is a component of the system of social protection. It fulfills the function of accumulation and allocation of funds of social protection intended for social assistance, social insurance benefits etc. Social provision includes active and passive efforts for income support.

Social insurance belongs to active efforts. The types of social insurance include pension insurance, insurance against accidents at work, insurance against temporary disability, unemployment insurance, and medical insurance.

Passive insurance includes *social assistance* – the assistance of the society to the person or family having lack of sufficient means of subsistence.

Formation of the system of social assistance is connected with the necessity of resolving such important issues as the choice of the type of social assistance (universal and selective character), form of social assistance (cash and non-cash assistance), establishing criteria for selecting recipients of aid etc.

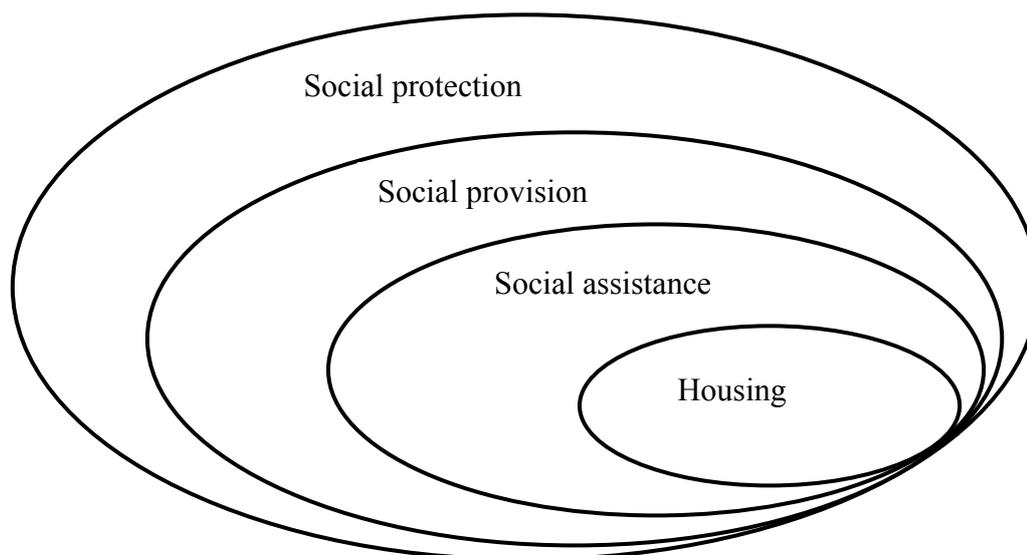
According to the selection criteria for recipients of aid there are two main types of social assistance:

- universal (categorical) social assistance benefits provided to certain groups of people with needs, but not including property or income of the recipients;
- targeted social assistance provided based on economic status and average monthly gross income of the family. Typically, such assistance does not have a fixed size since the amount of assistance depends on the material status of a particular family.

The latter type of social assistance includes the system of providing subsidies for compensation of expenses for housing and communal services (figure 1).

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<sup>1</sup>V. Skouratovsky, O. Paliy, E. Libanova. Social Protection. Kyiv: Ukrainian Academy of Public Administration, 2003.



*Figure 1. Interrelationship of the system of social protection, social provision and social assistance*

In order to define such type of subsidies, the notion “housing subsidies” is used in certain regulatory legal acts. For instance, according to the Budget Code of Ukraine, housing subsidies to people are defined as additional benefits to people for recovery of their expenses for housing and communal services<sup>2</sup>. Resolution of the Cabinet of Ministers of Ukraine dated 08.09.2010 №861 has more detailed definition of this notion: housing subsidies shall include<sup>3</sup>:

- non-cash subsidies for compensation of expenses for housing and communal services,
- cash subsidies for the purchase of liquefied gas, solid and liquid stove fuel.

The term “housing subsidies” is used in this very sense in most government regulatory legal acts regulating the issues in this sphere, e.g. in CMU’s Resolution dated 21.07.2010 № 624 “On Arrangement of Work for Providing Housing Subsidies to People according to the Simplified Procedure”.

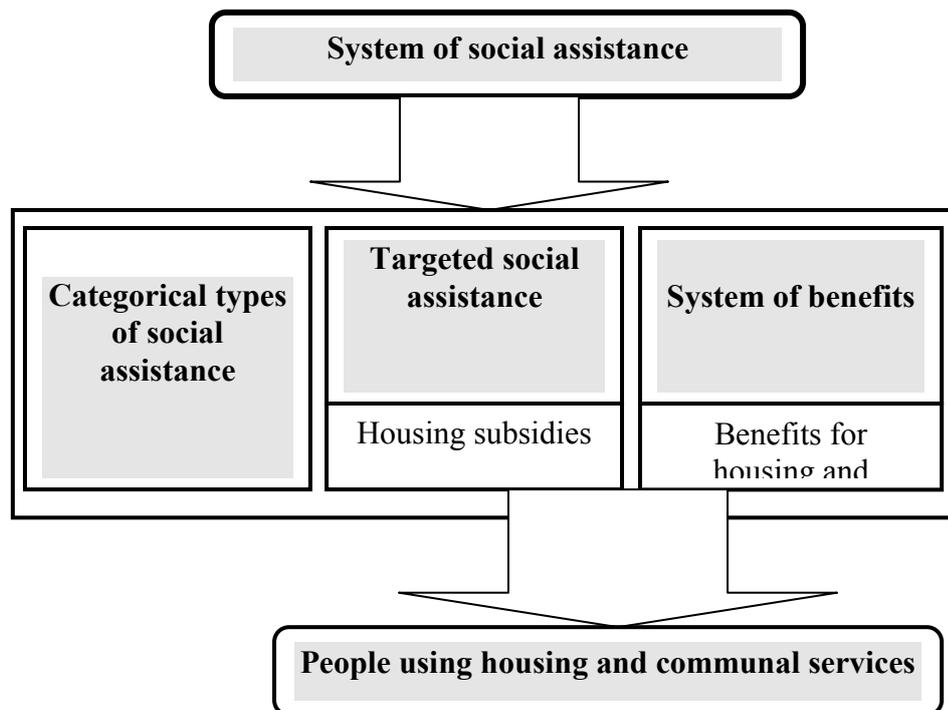
We should note that there is one more separate type of social assistance in Ukraine – social benefit. It is legally provided full or partial exemption of certain categories of citizens from the obligation to provision of additional rights if the social risk occurs. Social benefits should be considered as an additional type of social assistance. The privileged category of people includes war and labor veterans, rehabilitated people, Chornobyl veterans and a number of other

<sup>2</sup> The Budget Code of Ukraine

<sup>3</sup> Resolution of the Cabinet of Ministers of Ukraine dated 08.09.2010 № 861 “On Arrangement of Certain Issues on Simplified Procedure of Allocation and Provision of Subsidies for Compensation of Expenses for Housing and Communal Services, Purchase of Liquefied Gas, Solid and Liquid Stove Fuel”.

categories of citizens. Almost half of people in Ukraine are subject to modern benefit policy of the state, which proves the advanced development of this system<sup>4</sup>.

Pursuant to inspections, in almost half of households of the country there is at least one person who has the right for obtaining benefits. Every third of privileged people is of retirement age. At present, the issue of providing benefits in Ukraine is regulated by 45 legislative and other regulatory legal acts. There are about 140 types of benefits, compensations and guarantees. The most widely spread benefits include the benefits on the payment for housing and communal services; payment for using fuel; payment for using local transport and so on. So the system of providing housing subsidies is part of the general system of social protection (figure 2). Thus, it has all advantages and disadvantages of this system. Searching the ways of improvement of the system of housing subsidies provision should be considered in close connection with the main areas of reforming the general system of social protection and, namely, the system of state social assistance.



*Figure 2. The structure of the system of social assistance and the place of the subsystem of housing subsidies in it*

As far as the system of social assistance is concerned, in the first years of Ukraine the universal (categorical) types of this assistance prevailed. However, afterwards the main area of reforming implied the *transition to target types of social assistance*. It is connected with the purpose of improvement of the system, overcoming certain consumer tendencies inherited from the Soviet times rather than with the limited amount of financial resources. Targeted assistance implies

<sup>4</sup> S. Synus, V. Bourak. Law of Social Protection of Ukraine: Training Material. Kyiv: Znannya, 2003.

providing assistance to the neediest families taking into account their material state and average gross income. It is targeting that will allow increasing the efficiency of using available resources directed to the neediest groups of people. On the other hand, targeting will ensure restoring justice by providing social assistance to the neediest groups of people.

*Providing benefits in cash* is one of the most important areas of reforming social policy in Ukraine. Providing cash assistance instead of benefits for payment for consumed services will help implement the state policy regarding the principle of social justice in the allocation of budget funds (providing state aid to those very citizens who really need it), will provide the same opportunities to receive benefits for socially vulnerable groups of people (war and labor veterans etc.) regardless of the actual amount of consumption of services.

## 2. Legal regulation of the process of providing housing subsidies

The system of housing subsidies was established in Ukraine in 1995 by Resolution of the Cabinet of Ministers of Ukraine dated 04.02.95 № 89 “On Providing Subsidies to People for Compensation of Expenses for Housing and Communal Services” initiating providing non-cash subsidies for compensation of expenses for housing and communal services, liquefied gas and solid fuel. It should be noted that the system of housing subsidies came into effect in parallel with the current benefits to people in the housing sphere and did not cancel them.

The issues of providing subsidies for housing and communal services are not regulated by the laws of Ukraine except for certain laws of Ukraine where this issue is mentioned not directly or partially. At present, the legal regulation of housing subsidies is performed mainly on the basis of regulations of the Cabinet of Ministers of Ukraine (table 1).

The right of people for social protection and sufficient living standards for themselves and their families are prescribed in articles 46 and 48 of the *Constitution of Ukraine*<sup>5</sup>. Whereas the system of housing subsidies is part of the general system of social protection, it should be considered as the indirect legislative guarantee of the right of people for housing subsidies.

The laws concerning the principles of functioning of the system of housing subsidies include:

The Law of Ukraine “*On Housing and Communal Services*” dated 24.06.2004 № 1875-IV, article 21 of which stipulates the right of the housing and communal services provider to receive compensation for the benefits provided to certain groups of people according to the law and accrued subsidies for housing

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<sup>5</sup> The Constitution of Ukraine

and communal services, as well as to return them in case of failure to provide such services or benefits<sup>6</sup>.

The framework for the legislative regulation of financing of benefits and subsidies are consolidated in the *Budget Code of Ukraine*. Article 89 of the Budget Code of Ukraine stipulates that the expenditures of the district budgets and city budgets of the Autonomous Republic of Crimea and regions and included in the calculation of inter-budget transfers shall include the expenditures for additional payments to people for recovery of expenses for housing and communal services (housing subsidies to people) and benefits to certain groups of people. Article 102 of the Budget Code envisages that the expenditures for the state programs of social protection programs (including benefits and subsidies for recovery of expenses for housing and communal services) shall be financed at the account of subventions from the State Budget of Ukraine.

The Laws of Ukraine “*On the State Budget of Ukraine*” for the respective year stipulating the amounts of subventions from the state budget to the local budgets for providing benefits and housing subsidies to people for the payment for electricity, natural gas, heat, water supply and sanitation services, housing rent (maintenance of houses and constructions, as well as house land plots), removal of household wastes and liquid sewage.

Law of Ukraine dated 11.06.2009 № 1511-VI “*On Amendments to the National Program of Reforming and Development of Housing and Communal Economy for 2004-2010*”, which approved the new version of the Program for 2009-2014, in which one of the principles of the state policy of reforming housing and communal economy envisages transfer to economically feasible prices and tariffs for housing use and communal services, introduction of targeted subsidies to certain categories of citizens for compensation of expenses connected with the payment for housing and communal services<sup>7</sup>.

**Table 1**

**Legal regulation of the process of providing housing subsidies**

<i>Regulatory legal acts</i>	<i>Regulated issues</i>
The Constitution of Ukraine, Law dated 28 June 1996 №54k/96-VR, with amendments introduced by Law № 2952-VI dated 01.02.2011	Prescribes the right of the citizens for social protection and sufficient living standards.
Law of Ukraine dated 24.06.2004 №1875-IV “On Housing and Communal Services”	Defines the right of the housing and communal services provider to receive compensation for provided benefits and accrued subsidies.
The Budget Code of Ukraine, Law dated	The expenditures for housing

<sup>6</sup> The Law of Ukraine “On Housing and Communal Services” dated 24.06.2004 № 1875-IV

<sup>7</sup> Law of Ukraine dated 11.06.2009 № 1511-VI “On Amendments to the National Program of Reforming and Development of Housing and Communal Economy for 2004-2010”

08.07.2010 № 2456-VI, with amendments introduced in 2010	subsidies and benefits are performed from the district budgets and city budgets of the Autonomous Republic of Crimea and regions and included in the calculation of inter-budget transfers.
The Law of Ukraine “On the State Budget of Ukraine” for the respective year	Sets the amounts of subventions from the state budget to the local budgets for providing benefits and housing subsidies to people.
Law of Ukraine dated 11.06.2009 № 1511-VI “On Amendments to the National Program of Reforming and Development of Housing and Communal Economy for 2004-2010”	One of the principles of the state policy of reforming housing and communal economy envisages transfer to economically feasible prices and tariffs for housing use and communal services, introduction of targeted subsidies to certain categories of citizens for compensation of expenses connected with the payment for housing and communal services.
VRU’s Resolution dated 30.08.2010 № 2493-VI “On Social Protection of People in the Context of Formation of Tariffs for Gas and Housing and Communal services”	Provides the recommendations to the Cabinet of Ministers of Ukraine regarding the implementation of the simplified system of subsidies allocation including the payment for gas, which stipulates the exemption of citizens from collecting information in family members, cost of communal services for subsidies allocation.
CMU’s Resolution dated 14.07.2010 №621 “On Enhancing Social Protection of People during Payment for Housing and Communal Services”	The instructions to the ministries on the simplified procedure of providing housing subsidies have been provided. CMU’s Resolution dated 21.10.1995 № 848 “On Simplification of the Procedure of Provision of Subsidies to People for Compensation of Expenses for Housing and Communal Services, Purchase of Liquefied Gas, Solid and Liquid Stove Fuel” has been amended.
CMU’s Resolution dated 21.07.2010 № 624 “On Arrangement of Work for Providing Housing Subsidies to People according to the Simplified Procedure”	The instructions to the ministries on the simplified procedure of providing housing subsidies have been provided. In particular, the Ministry of Labor and Social Policy shall approve the form of the documents for obtaining subsidies according to the simplified procedure, ensure the preparation of notices on providing housing subsidies to people according to the simplified procedure, as well as templates of documents for providing subsidies and examples of filling them.
CMU’s Resolution dated 08.09.2010 № 861 “On Arrangement of Certain Issues on Simplified Procedure of Allocation and Provision of Subsidies	The instructions to the ministries on further improvement of the simplified procedure of providing housing subsidies

<p>for Compensation of Expenses for Housing and Communal Services, Purchase of Liquefied Gas, Solid and Liquid Stove Fuel”</p>	<p>have been provided. Particularly, the Ministry of Internal Affairs, Ministry of Justice, Ministry of Labor and Social Policy shall regulate the issues of providing data on registered persons in the residential premises (house) by labor and social protection authorities upon people’s requests. CMU’s Resolution dated 21.10.1995 № 848 has been amended.</p>
<p>Program of Economic Reforms of the President of Ukraine for 2010-2014 “Prosperous Society, Competitive Economy, Effective State” dated 02.06.2010</p>	<p>The Program stipulates the specific plan of reforming of the system of social support: enhance targeted character of providing social support; increase the efficiency of administrative decisions in the system of social support of people; introduce the incentives for economically responsible behavior of social support recipients.</p>
<p>CMU’s Resolution dated 11.10.2010 № 947 “On Implementation of Electronic Social Card”</p>	<p>It was decided to hold an experiment on the establishment of the information analytic system of regional administration and implementation of an electronic social card in the Autonomous Republic of Crimea, Kyiv, Kharkiv and Chernivtsy regions in 2010-2011.</p>
<p>CMU’s Resolution dated 21.10.1995 № 848 “On Simplification of the Procedure of Provision of Subsidies to People for Compensation of Expenses for Housing and Communal Services, Purchase of Liquefied Gas, Solid and Liquid Stove Fuel” (in the revision of the CMU dated 22.09.1997 № 1050 with amendments introduced in 1997-2004, 2006-2007, 2009-2010)</p>	<p>One of the main regulatory acts approving the current Provision on the Procedure of Allocation and Provision of Subsidies for Compensation of Expenses for Housing and Communal Services, Purchase of Liquefied Gas, Solid and Liquid Stove Fuel.</p>
<p>CMU’s Resolution dated 27.07.1998 № 1156 “On the New Amount of Expenses for Payment for Housing and Communal Services, Purchase of Liquefied Gas, Solid and Liquid Stove Fuel in Case of Housing Subsidy Provision” with amendments introduced in 1999-2001, 2003, 2007, 2010</p>	<p>One of the main current regulatory acts determining the amount for payment for housing and communal services, purchase of liquefied gas, solid and liquid stove fuel in case of housing subsidy provision.</p>
<p>Order of the Ministry of Labor and Social Policy, Ministry of Economy (before 2000), Ministry of Finance, State Committee for Construction, Ministry of Energy, UkrGas dated 15.04.1998 №58/45/91/73/51/23/10-538 “On Approval of the Methodology for Provision of Subsidies to People for Compensation of Expenses for Housing and Communal Services, Purchase of Liquefied Gas, Solid and Liquid Stove Fuel”, reg. № 379/2819 of the Ministry of Justice dated 15.06.1998 with amendments introduced in</p>	<p>One of the main current regulatory acts approving the Methodology prescribing, inter alia, the main conditions for providing subsidies, norm of ownership or use of the common living area, terms of subsidies allocation, the documents required for subsidies allocation. The methodologies of calculation of the average gross income and subsidy amount have been approved.</p>

1999 CMU’s Resolution dated 01.08.1996 № 879 “On setting the norms of using housing and communal services by the citizens who have benefits for their payment” with amendments introduced in 1997, 2003-2004	The norms within which the benefits for payment for housing and communal services (use of housing, heat supply, consumption of electricity and natural gas for domestic needs) have been established.
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We should mention that in comparison with subsidies, the issues of providing benefits for payment for housing and communal services are regulated by a great number of separate laws including “On Militia”, “On the Status of War Veterans, Guarantees for their Social Protection”, “On the Status and Social Protection of the Citizens Suffered from Chornobyl Accident”, “On Basic Principles of Social Protection of Labor Veterans and Other Aged People in Ukraine”, “On Military Veterans, Veterans of Internal Affairs Authorities and Certain Other Persons and their Social Protection”, “On Rehabilitation of Victims of Political Repressions in Ukraine” etc. (table 2).

The right for obtaining housing subsidies and procedure of their allocation are established mainly by the acts of the Cabinet of Ministers of Ukraine.

The main documents still include the regulations adopted in 1990:

- CMU’s Resolution dated 21.10.1995 № **848** “On Simplification of the Procedure of Provision of Subsidies to People for Compensation of Expenses for Housing and Communal Services, Purchase of Liquefied Gas, Solid and Liquid Stove Fuel”. This Resolution has been amended up to recent time; the amendments improve the procedure of subsidies provision and adjust it to the requirements of other regulations.

- CMU’s Resolution dated 27.07.1998 № **1156** “On the New Amount of Expenses for Payment for Housing and Communal Services, Purchase of Liquefied Gas, Solid and Liquid Stove Fuel in Case of Housing Subsidy Provision”

- Order of the Ministry of Labor and Social Policy, Ministry of Economy (before 2000), Ministry of Finance, State Committee for Construction, Ministry of Energy, Ukrigas dated 15.04.1998 №**58/45/91/73/51/23/10-538** “On Approval of the Methodology for Provision of Subsidies to People for Compensation of Expenses for Housing and Communal Services, Purchase of Liquefied Gas, Solid and Liquid Stove Fuel”, (registered by the Ministry of Justice on 15.06.1998 № 379/2819).

- At the end of 2006 there was an attempt to improve the procedure of allocation and provision of housing subsidies. Particularly, Resolution of the Cabinet of Ministers of Ukraine dated 21.10.1995 № 848 “On Simplification of the Procedure of Provision of Subsidies to People for Compensation of Expenses for

Housing and Communal Services, Purchase of Liquefied Gas, Solid and Liquid Stove Fuel” established personal responsibility of the person for provided information required for the provided information required for subsidy allocation.

In 2010 the Cabinet of Ministers of Ukraine adopted a number of documents aimed at the further improvement of the existing system of providing housing subsidies.

Resolution of the VRU dated 30.08.2010 № **2493-VI** “On Social Protection of People in the Context of Formation of Tariffs for Gas and Housing and Communal Services”. This Resolution contained the recommendations of the VRU to the Cabinet of Ministers of Ukraine including:

- ensuring the decrease of the mandatory payment for housing and communal services from 15% to 10% of the average monthly gross income for the families consisting of pensioners, handicapped people and children up to 18 years old; from 20% to 15% for other families having able-bodied citizens.
- implementation of the simplified system of housing subsidies allocation including the payment for gas, which envisages the exemption of citizens from collecting information on family members, as well as the cost of communal services for subsidies allocation.

CMU’s Resolution dated 14.07.2010 № **621** “On Enhancing Social Protection of People during Payment for Housing and Communal Services”. This Resolution approved the simplified procedure of subsidies allocation including the decrease of the amount of mandatory payment for housing and communal services from 20-15% to 15-10%, decrease of the number of documents required for housing subsidies allocation, re-calculation of subsidies due to the increase of prices and tariffs for housing and communal services without getting additional information from the citizens.

CMU’s Resolution dated 21.07.2010 № **624** “On Arrangement of Work for Providing Housing Subsidies to People according to the Simplified Procedure”.

CMU’s Resolution dated 08.09.2010 № **861** “On Arrangement of Certain Issues on Simplified Procedure of Allocation and Provision of Subsidies for Compensation of Expenses for Housing and Communal Services, Purchase of Liquefied Gas, Solid and Liquid Stove Fuel”.

Resolution of the Cabinet of Ministers of Ukraine dated 11.10.2010 № **947** “On Implementation of Electronic Social Card” with amendments introduced by CMU’s Resolutions № 1018 dated 10.11.2010, №1113 dated 08.12.2010 sets forth that the Ministry of Finance shall be the main owner and coordinator of the work on the implementation of an electronic social card. The plan was to hold an experiment on the establishment of the information analytic system of regional administration and implementation of an electronic social card in the Autonomous Republic of Crimea, Kyiv, Kharkiv and Chernivtsy regions in 2010-2011.

The Program of economic reforms of the President of Ukraine for 2010-2014 “Prosperous society, competitive economy, effective state” developed by the Committee for economic reforms of the President of Ukraine and approved on 02.06.2010 is the most important regulatory act in this sphere today.

For the purpose of implementation of this Program the following acts were approved:

- Order of the President of Ukraine dated 21.12.2010 № **1154/2010** “On Actions for Ensuring the Efficient Implementation of the Program of Economic Reforms for 2010-2014 “Prosperous Society, Competitive Economy, Effective State”;
- Instruction of the Cabinet of Ministers of Ukraine dated 23.06.2010 № **1725-p** “On Priority Actions for 2010 on the Implementation of the Main Provisions of the Program of Economic Reforms for 2010-2014 “Prosperous Society, Competitive Economy, Effective State”;
- Instruction of the Cabinet of Ministers of Ukraine dated 23.06.2010 № **1724-p** “On the Implementation of the Program of Economic Reforms for 2010-2014 “Prosperous Society, Competitive Economy, Effective State”.

This Program envisages a specific plan of reforming the system of social support performed in three forms: social benefits, grants and social assistance.

Such reform is aimed at the increase of covering poor groups of people with social support efficiently using budget funds. For achieving such aims the following objectives have been set:

- enhancing the targeting of social support;
- increasing the efficiency of administrative decisions in the system of social support of people;
- introducing the incentives for economically responsible behavior of the social support recipients.

**Table 2**

**Legal regulation in the sphere of providing benefits for housing and communal services**

Regulatory legal acts	Benefits for housing use (housing rent)	Benefits for payment for housing and communal services (heat, water supply, gas, electricity etc.)	Benefits for payment for fuel (purchase of liquefied gas, solid and liquid stove fuel)
Law of Ukraine dated 20.12.1990 №565-12 “On Militia”	x	x	x

Law of Ukraine dated 28.02.1991 №786-12 “On the Status and Social Protection of the Citizens Suffered from Chornobyl Accident”	x	x	x
Law of Ukraine dated 17.04.1991 №962-12 “On Rehabilitation of Victims of Political Repressions in Ukraine”	x	x	
Law of Ukraine dated 23.05.1991 №1060-12 “On Education”	x	x	
Law of Ukraine dated 20.12.1991 №2011-12 “On Social and Legal Protection of Military Men and their Family Members”	x	x	
Basic legislation of Ukraine on culture dated 14.02.1992 №2117-12	x	x	x
Law of Ukraine dated 15.05.1992 №2346-12 „ On the Priority of Social Development of Village and Agriculture in National Economy”		x (electricity)	
Law of Ukraine dated 19.11.1992 №2801-12 “On Basic Legislation of Ukraine on Health Care”	x	x (electricity)	x
Law of Ukraine dated 15.12.1992 № 2862-12 “On the Status of Judges”	x	x	
Law of Ukraine dated 05.02.1993 №2998-12 “On Promoting Social Advancement and Development of Young People in Ukraine”		x (electricity)	
Law of Ukraine dated 22.10.1993 №3551-12 “On the Status of War Veterans, Guarantees for their Social Protection”	x	x	x
Law of Ukraine dated 16.12.1993 №3721-12 “On Basic Principles of Social Protection of Labor Veterans and Other Aged People in Ukraine”	x	x	x
VRU’s Resolution dated 16.12.1993 №3720-12 “On Approval of the Procedure of Acquisition, Logistics, Military, Financial and Social Support of the Special Units to Combat Organized Crime of the Ministry of Internal Affairs of Ukraine”	x	x	x
Law of Ukraine dated 17.12.1993 №3745-12 “On Fire Safety”	x	x	x
Law of Ukraine dated 27.01.1995 №32/95-BP “On Libraries and Librarianship”	X		
Law of Ukraine dated 15.02.1995 №56/95-BP “On the Status of Mountain Settlements in Ukraine”		x (electricity)	
Law of Ukraine dated 29.06.1995 №249/95-BP “On Museums and Museum Services”	x		
Law of Ukraine dated 05.11.1995 №1789-12 “On Prosecution”	x	x	
Law of Ukraine dated 23.09.1997 №540/97-BP “On the State Support of Mass Media and Social Protection of Journalists”	x	x	x
Law of Ukraine dated 24.03.1998 №203/98-BP “On the Status of Military Veterans, Veterans of Internal Affairs Authorities and Certain Other Persons and their Social Protection”	x	x	x

Mining Law of Ukraine dated 06.10.1999 №1127-14		x	x
Law of Ukraine dated 14.12.1999 №1281-14 “On Emergency Services”	x	x	x
Law of Ukraine dated 23.03.2000 №1584-3 “On the Victims of Nazi Persecution”	x	x	x
Law of Ukraine dated 15.06.2004 №1763-4 “On the State Guarantees of the Social Protection of Military Men Discharged due to the Reform of the Armed Forces of Ukraine and their Families”	x	x	
Law of Ukraine dated 18.11.2004 №2195-4 “On Social Protection of Children of War”		x	

### 3. Organizational and methodological support

In order to provide social protection of needy families, the subsidy for compensation of expenses for housing and communal services, purchase of liquefied gas, solid and liquid stove fuel (housing subsidy) shall be provided in the form of:

- monthly targeted non-cash subsidy for compensation of expenses for the use of housing and its maintenance and communal services (heat, water supply, gas supply, sanitation, removal of household wastes and liquid sewage);
- annual subsidy in cash for purchase of liquefied gas, solid and liquid stove fuel<sup>8</sup>.

Allocation of subsidies and control over their proper use shall be performed by the bodies of labor and social protection of people including:

- departments of labor and social protection of people of district and Kyiv and Sevastopol city district state administrations,
- structural departments of labor and social protection of people of executive bodies of district and city district (if established) councils.

Families in which the amount of payment for housing and communal services within the consumption rates including benefits exceeds the amount of mandatory payment percent established by the Cabinet of Ministers of Ukraine have the right for subsidy.

The subsidy is provided for the area within the established rates, i.e. it is limited to the rate of ownership (for home owners) or rate of use (for tenants). The norm of ownership or use of general area of housing is 21 sq. m per each registered

<sup>8</sup> Resolution of the Cabinet of Ministers of Ukraine dated 27.12.2001 № 1763 “On Providing Subsidies in Cash to People for Compensation of Expenses for Housing and Communal Services, Purchase of Liquefied Gas, Solid and Liquid Stove Fuel”.

person and additionally 10.5 sq. m for all registered persons; for persons living in a single room apartment – general area irrespective of the apartment size.

Furthermore, the rates of using housing and communal services have been established. The amount of subsidy is calculated on their basis.

The payment for district heating is calculated based on the rate of heated area: 21 sq. m per owner or tenant and each registered person and additionally 10.5 sq. m for all registered persons (not exceeding actual heated area).

Electricity consumption rates for subsidies calculation were approved by Resolution of the Cabinet of Ministers of Ukraine dated 01.12.1995 №959 with amendments introduced in subsequent years<sup>9</sup>.

Other rates of communal services consumption are established by the Council of ministers of the Autonomous Republic of Crimea, regional, Kyiv and Sevastopol city state administrations in the form of tariffs.

Pursuant to CMU's Resolution dated 14.07.2010 № 621 "On Enhancing Social Protection of People during Payment for Housing and Communal Services", the amount of mandatory payment for housing and communal services is 10% of the average monthly gross income for the families consisting of pensioners, handicapped people and children up to 18 years old; 15% for other families having able-bodied citizens (table 3).

Particularly, if there are children up to 18 years old, handicapped persons of I and II groups registered in the residential premise or house and the average monthly income per one registered person does not exceed 50% of the minimum living wage, the amount of payment for housing and communal services within the rates of ownership or use of general living area and rates of using mentioned services provided that the subsidy is allocated shall amount 10% of the average monthly gross income, for purchase of liquefied gas, solid and liquid stove fuel – 10% of the annual gross income.

This concerns the case when only disabled citizens are registered and live in the residential premise (house).

For all other families the mandatory payment percent is 15% of the average monthly gross income and 15% of the annual gross income accordingly.

Generally the calculation of subsidies for housing and communal services shall be performed in such order:

- determining the applicant's average monthly gross income and amount of mandatory part of payment for housing and communal services;
- determining the general monthly payment amount for housing and communal services within the rates of ownership or use of housing and rates of using housing and communal services in a specific locality;

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<sup>9</sup> Resolution of the Cabinet of Ministers of Ukraine dated 01.12.1995 №959

- calculation of the subsidy amount as the difference between the amount of payment (within the rates) and amount of mandatory part of payment of the applicant.

So the level of income of the family with regard to the payments within the specified consumption rates and mandatory part of payment is the main criterion for receiving housing subsidy. When applying for housing subsidies, citizens fill out a declaration of income and property of the persons registered in the residential premise and confirm agreement to review the information provided according to the legislation.

**Table 3**

**Mandatory payment percent for housing subsidy allocation established by CMU's resolution dated 27.07.2010 № 1156 (with further amendments)**

Type of subsidies	Among registered in the apartment (house):		All other families
	there are children up to 18 years old, handicapped people of I and II groups, income does not exceed 50% of the minimum living wage per one person per month	there are pensioners who do not work and other disabled people whose only source of living includes the income from personal farming, pension and other social transfers	
<b>Non-cash subsidy:</b> mandatory percent of payment for allocation of subsidy for housing and communal services <i>(from average monthly gross family income)</i>	10 % For 6 months	10% For 6 months	15% For 6 months
<b>Cash subsidy:</b> mandatory percent of payment for allocation of subsidy for purchase of liquefied gas, solid and liquid stove fuel <i>(from annual gross family income)</i>	10% For calendar year	10% For calendar year	15% For calendar year
documents submitted (personally or via post) for re-calculation of subsidies	Application, information on income of registered citizens	Application	Application, information on income of registered citizens

In order to ensure individual approach during adoption of decisions concerning subsidies allocation the exceptions from general rules are stipulated. However, the exceptions can be made based upon the decision of city and district councils (or the commissions established by them) on the basis of an act of inspection of material conditions of the family. So the state social inspectors can hold selective inspections of material conditions of applicants. If the inspection proves that information provided is not true, the subsidy cannot be approved.

The main characteristics of the existing system of providing housing subsidies are provided in table 4.

Table 4

### Characteristics of the existing system of providing housing subsidies

<i>Characteristics</i>	<i>Way of implementation</i>
Right for subsidy allocation	<p>Provided to families in which the amount of payment for housing and communal services exceeds the amount of mandatory payment percent established by the Cabinet of Ministers of Ukraine (at present 10-15%).</p> <p>At the same time, the amount of payment for housing and communal services is determined within the <i>rates</i> of consumption and including <i>benefits</i>.</p>
Right of the body of labor and social protection for validation of data	<p>The bodies of labor and social protection have the right for <i>holding inspections</i> for validation of data obtained from the subsidy applicants. They have the right to request and receive the information free of charge from:</p> <ul style="list-style-type: none"> <li>- Bodies of State Tax Service,</li> <li>- DAI departments,</li> <li>- Bureau of Technical Inventory,</li> <li>- Bodies of State Control Auditing Service,</li> <li>- Other bodies of executive power,</li> <li>- Bodies of local self-government.</li> </ul>
Information submitted to the body of labor and social protection for subsidies allocation	<p><i>From the applicant – subsidy recipient:</i> application, information about the income of registered citizens (personally or via post)</p> <p><i>From ZhEKs, village (town) councils, or other bodies appointed by the local bodies of executive power and self-government:</i> information about the persons registered in residential premises.</p> <p><i>From ZhEKs, HOAs, housing co-operatives, communal services providers:</i> information about living area and communal services provision.</p> <p><i>From communal services providers:</i> actual heat, water, gas, electricity consumption for the previous period (if meters are available).</p>
Term of adoption of decisions	<p>The decision on allocation (refusal) of the subsidy is adopted within <b>10 days</b> from application and receiving necessary data.</p>
Terms of re-calculation of subsidies within the established term	<p>Re-calculation of the subsidy within the set term is performed upon <i>personal application</i> of citizens. <i>Automatic re-calculation</i> of the subsidy as an exception should be performed in the event of:</p> <ul style="list-style-type: none"> <li>- change of tariffs for services, the payment of which is subject to subsidy;</li> <li>- establishment of a new amount of expenses of citizens for payment for housing and communal services, purchase of liquefied gas, solid and liquid stove fuel;</li> <li>- amendments to the legislation concerning providing g benefits</li> </ul>

	for payment for housing and communal services to certain categories of citizens.
Responsibility for invalid data	<p>A citizen is responsible for provided information. Upon the request of the body which provided the subsidy, the citizen has to return the amount of the subsidy transferred (paid) in excess due to conscious submission of invalid documents by the citizen.</p> <p>In case when the citizen did not return the subsidy transferred (paid) in excess, the bodies allocating subsidies shall resolve the issue in court.</p>
Cases of refusal of subsidies	<p>Subsidies shall not be provided if:</p> <ol style="list-style-type: none"> <li>1. A residential premise (house) was purchased less than a year ago.</li> <li>2. A residential premise (house) is rented out according to the contract.</li> <li>3. Minor children having parents are registered in a residential premise (house) alone.</li> <li>4. The citizens registered in a residential premise (house) or their families own: <ul style="list-style-type: none"> <li>- more than one residential premise (house), the total area of which in aggregate exceeds the established rates of ownership or use of total are of housing;</li> <li>- more than one automobile (not including the vehicles that do not subject to taxation under the law (except for caterpillar tractors))</li> </ul> </li> <li>5. The persons registered in a residential premise (house) include able-bodied persons who do not work, study full-time or are not registered at employment service. <i>(Not including when these citizens provided social services or:</i> <ul style="list-style-type: none"> <li>- <i>look for children under 3 (or 6 if a medical conclusion is available);</i></li> <li>- <i>have three or more children under 16 and look for them;</i></li> <li>- <i>look for handicapped people of group I or handicapped children under 18 or handicapped people of groups I/II having mental disorder, or persons who have attained the age of 80).</i></li> </ul> </li> <li>6. During 12 months before the application for subsidy any of the registered persons has purchased: <ul style="list-style-type: none"> <li>- a land plot,</li> <li>- an apartment (house),</li> <li>- an automobile or other vehicle (mechanism),</li> <li>- construction materials,</li> <li>- other long-term consumption goods etc.</li> </ul> </li> <li>7. During 12 months before the subsidy allocation any of the registered persons has paid for the following services in the amount exceeding 10 minimum living wages for such persons: <ul style="list-style-type: none"> <li>- education,</li> </ul> </li> </ol>

	<ul style="list-style-type: none"> <li>- construction,</li> <li>- repair of an apartment (house) or automobile, vehicle (mechanism),</li> <li>- telephone (including mobile phone) communication services etc.</li> </ul> <p><i>(Except for housing and communal services within consumption rates and medical services connected with vital functions support).</i></p> <p><b>8.</b> During a random inspection of material conditions a state social inspector has found out that any of the persons registered in a residential premise (house) and charged for housing and communal services:</p> <ul style="list-style-type: none"> <li>- has additional sources of income not specified in the declaration of income and property;</li> <li>- rents out a residential premise or its part;</li> <li>- works without official employment;</li> <li>- receives income from livestock, poultry and other animals;</li> <li>- receives income from crafts;</li> <li>- receives income from using available agricultural machinery, truck, van etc..</li> </ul>
<p>Exceptions in subsidy allocation</p>	<p>If there are reasons for refusal, the bodies of labor and social protection of people can allocate subsidies as an exception taking into account the specific circumstances.</p> <p>It is based on the decision of district, Kyiv and Sevastopol city district administrations and executive bodies of city and district councils or commissions established by them.</p> <p>The decision on allocation (refusal) of subsidy in such cases is approved on the basis of an act of inspection of material conditions of a family.</p>

#### 4. Problems of the existing system of housing subsidies

According to the estimation of the Institute of Demography and Social Research of the National Science Academy of Ukraine<sup>10</sup>, the impact of the housing subsidies system on the development of social process has neutral character. The analysis shows that housing subsidies almost have no impact on reducing income inequality in society and reducing poverty in the country.

During the past 10 years housing subsidies gradually lost their importance as an effective form of social assistance – their share in total income of families decreased from 2.9% in 2000 to 0.6% in 2009. During 1999-2008 the number of households that participated in the program of housing subsidies substantially reduced. While in 1999 28% of households participated in the program, in 2008 their number decreased by more than 6 times – 4.4%. Raising tariffs for housing and communal services in recent years has resulted in increased importance of this

<sup>10</sup> Report on research «...» performed for the Ministry of Housing and Communal Services of Ukraine, 2009.

type of assistance and increase of the number of users. Thus, in 2010 the number of recipients of subsidies increased to 8% (table 5).

**Table 5**

**The share of households – recipients of housing subsidies, %**

<i>Year</i>	<i>The share of households receiving housing subsidies, % to total number of households</i>
1999	28.0
2000	25.0
2001	21.6
2002	16.5
2003	14.2
2004	11.4
2005	6.7
2006	3.8
2007	5.3
2008	4.4
2009	5.0
2010	8.0

*Source: The data of the State Committee for Statistics for 1999–2010*

In general, in the structure of total household expenditures the payment for housing and communal services (including the amount of non-cash benefits and subsidies) was: in 2007 – 8.5% in 2008 – 6.6% in 2009 – 7.7%.

The amount of received housing subsidies (cash and non-cash) per each standard household in the structure of payment for housing and communal services in 2009 was 9% (or 19 UAH per month), including urban households – 8%, rural – 12% (table 6).

**Table 6**

**The share of housing benefits and subsidies in the expenses for housing and communal services of the household, 2009\***

<i>Household</i>	<i>The share of housing benefits and subsidies in the expenses for housing and communal services</i>
In average per standard household	9%
Per 1 urban household	8%
Per 1 rural household	12%
Household with children	5%
Household without children	12%
Household decile 1*	4.5%
Household with income less than minimum living wage	5.6%

Household decile 10	6.8%
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\* According to the State Committee for Statistics of Ukraine

The structure of households receiving housing subsidies is representative. These are mainly the households without children: in 2008 there were 78% of such families, in 2010 – 80%. Among households without children pensioners and nonworkers use subsidies most – up to 60%.

In general, among households without children the subsidized households reach 5.5% against 2.6% in households with children. It should be noted that in Ukraine families with children, especially large families, are the most vulnerable categories.

Increasing tariffs for communal services affected the structure of housing subsidies. Thus, in recent years, the subsidy for heating is biggest part of subsidies for housing and communal services. Since 2006 this share exceeds 41%. If in 2002 the subsidy for natural gas had the biggest share (42.4%) in the structure of subsidies, in 2008 it reduced in 1.6 times (up to 27%). But the share of subsidies for heating (compared with 2002) on the contrary increased in 1.6 times. This change is the result of significant growth of tariffs for heating, which in the structure of expenses for housing and communal services is the most expensive service.

Today one can state that housing subsidies do not make a significant impact on financial welfare of households of the country. This proves the existence of problems in the current system of housing subsidies because the amount of assistance for households is minimal and the mechanism of its provision is too complicated. In general, the current social assistance system requires significant changes to strengthen its influence on the situation of poverty as it reserves the possibility of receiving subsidies not only by those who really need it.

So ***unfair provision of housing subsidies*** is the main **problem** of the current system of housing subsidies. Unfair allocation of housing subsidies implies the low level of covering poor people and provision of this type of assistance to those people who do not need it.

It should be noted that it is the lack of general social assistance system. As statistics shows, less than 23% of the total social assistance amount reaches poor families with the income below the living minimum wage. The reason for this is the low level of targeted assistance. Only 3.5% of the poor (according to the criterion of a minimum living wage) receive housing subsidies. It should be noted that in recent years a lot has been done to improve the targeting of housing subsidies. This is evidenced by an increasing share of subsidies which goes to the poorest first decile. If in 1999 the first decile received only 5.5% of total subsidies, in 2008 this figure increased almost 4 times and was 20%. However, the effectiveness of subsidies is still very low. This can indicate that mainly non-poor groups of people use this targeted assistance.

This is proved by the results of research of the Institute of Demography and Social Research. In 2008, as in previous years, among the poorest (the first two deciles) and richest (the last two deciles) the share of recipients was the smallest one. And the largest share of recipients of subsidies falls on middle deciles (from the fourth to the sixth decile).

Thus, the complex mechanism of administration of housing subsidies, which is targeted type of assistance and requires verification of household income, does not guarantee the targeting of funds to the most needy people. This suggests the need to impose restrictions on the use of subsidies to those households whose level of income allows paying for communal services and fuel on their own account.

The efforts capable to increase the targeting of the housing subsidies system include:

- restricting the entry into the program of housing subsidies with the level of income in the amount of minimum living wage;
- strengthening the rules of the entry into the housing subsidy program through the complete elimination of exclusions during assistance allocation;
- canceling regional differences when subsidizing above the standard living area.

Thus, the housing subsidy program now works mostly not on the poor people. The mechanism of verifying the neediness of families requires significant expenditures, but does not give the desired effect; the problem of ineffective targeting has not been resolved in recent years.

The *parallel existence of complex and numerous benefits* including benefits for housing and communal services is another important **problem** of the housing subsidies system.

The soviet system of benefits transferred into the huge, extended, nontransparent and unfair mechanism of social protection.

Today the benefits system has a complex structure. The procedure of providing benefits is regulated by many laws and regulations, which comprise around 50 documents. According to the current legislation, there are dozens of privileged categories and various kinds of benefits. In the Unified State Register, which was formed in 2003<sup>11</sup>, today there are about 13 million people eligible for benefits.

Functioning of the current benefits system in Ukraine is aimed at resolving two fundamentally different tasks: on one hand – supporting vulnerable groups of people, on the other hand – giving privileges to some categories of citizens.

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<sup>11</sup> CMU's Resolution dated 29.01.2003 №117 "On a Unified State Automated Register of People who Have the Right for Benefits" with amendments introduced by CMU's Resolutions in 2003-2004, 2006 and 2009

Benefits of the first group belong to the category of social protection of people. They are provided according to the social status of citizens, namely: war veterans, persons suffered from the Chernobyl accident, handicapped and rehabilitated people etc.

As for the benefits of the second group, they are the privilege of respective professions rather than an instrument of social protection. These benefits are provided based on professional or service feature to some categories of citizens such as the militia and fire prevention officers, judges, military personnel, prosecutors, people’s deputies of different levels and so on.

The main drawback of the current system of benefits includes the low level of targeting, lack of connection between the right for benefits and the level of neediness of potential users. Thus, among the recipients of benefits 90.2% is non-poor population (based upon the criterion of minimum living wage).

Concerning the benefits for housing and communal services, they cover more than 22% of people (table 6). Children of war (more than 4 million people) and war veterans (2.3 million people) are the largest privileged categories (table 7).

The lack of a single systematic approach to providing housing benefits and subsidies is a problem. It results in the lack of a common system of accounting of recipients of housing benefits and subsidies.

In addition, the simultaneous existence of housing subsidies and benefits increases the cost of administering the programs that actually serve the same functions. The preservation of paternalistic guidance and consumer attitude resulting in the lack of incentives for energy saving in the sphere of housing and communal services is a negative result.

**Table 7**

**The most numerous categories of persons who have the right for benefits for housing and communal services**

<b>Categories of people having benefits for housing and communal services</b>	<b>Benefit type</b>
Children of war	25% of discount for payment for services
War veterans: for special merits and war invalids	100% of discount for payment for services
Combatants	75% of discount for payment for services
Veterans and family members of war victims or	50% of discount for payment for

dead veterans	services
Suffered from Chornobyl accident of cat. I and II	50% of discount for payment for services
Large families	50% of discount for payment for services
Military veterans	50% of discount for payment for services
Retired militiamen, prosecutors and judges	50% of discount for payment for services
Retired medical, educational officers, librarians and militiamen in the country	Free use of housing with lighting and heating
Miners and retired miners	Compensation for payment for electricity, gas and district heating

The ***lack of incentive for energy saving*** is an essential **problem**. The size of a housing subsidy depends solely on the income of citizens, which does not encourage them to reduce the consumption of energy (electricity, heat, gas, liquefied gas, stove fuel) and other resources (cold and hot water). It should be noted that the Government took some measures in this area. For instance, Resolution of the Cabinet of Ministers of Ukraine dated 07.11.2003 № 1740 “On Amendments to the CMU’s Resolution from December 1, 1995 № 959” prescribed that when calculating subsidies for reimbursement of the expenses for the use of natural gas and electricity in residential premises equipped with meters their actual consumption volume is used but not exceeding the established rates. This had to encourage the population receiving subsidies to efficient consumption of electricity and gas.

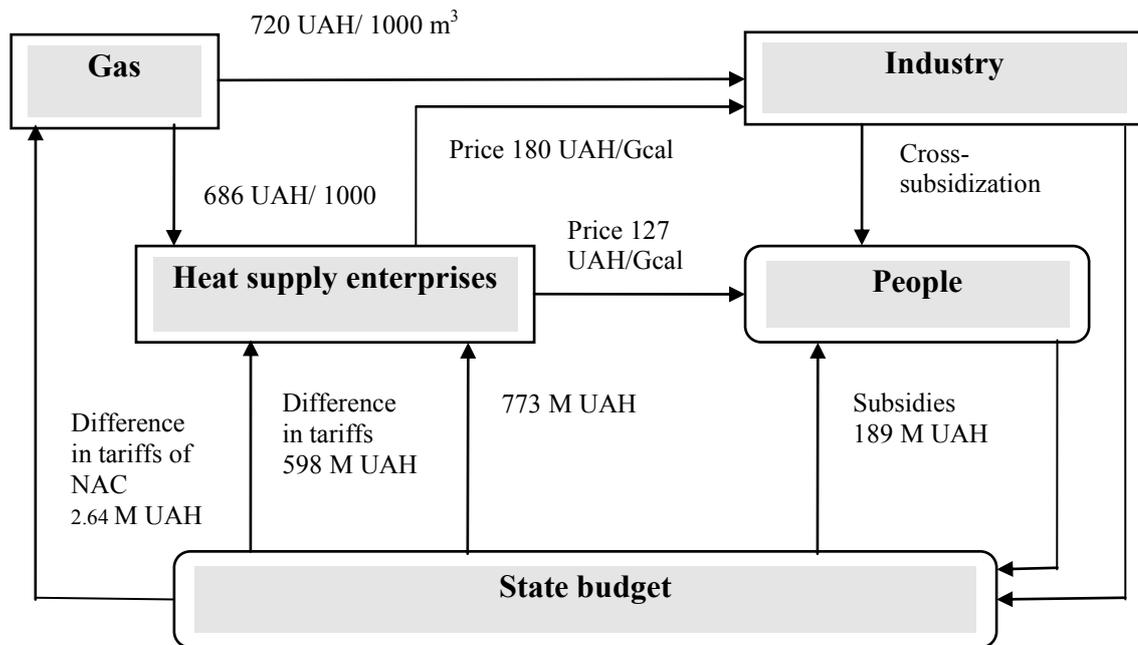
However, in general, the procedure of subsidies calculation and use of overstated rates of consumption (e.g. for water) do not promote efficient use of resources by people.

The **problems** of the current system of housing subsidies also include the ***existing system of tariff setting for housing and communal services***. The non-compliance of tariffs with the cost of communal services results in inefficient use of budget funds due to ineffective subsidizing of tariffs for gas for people and communal heat energy companies, repayment of the difference in tariffs for housing and communal services.

The drawbacks of tariff setting are compensated by the complex and complicated system of support of people and DH enterprises. Figure 3 shows the example of budgetary support in 2007, the scheme of which has not changed by today<sup>12</sup>.

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<sup>12</sup> Strategic working plan of the Ministry of Housing and Communal Services of Ukraine: developed and printed by the Ministry of Housing and Communal Services of Ukraine, 2008.

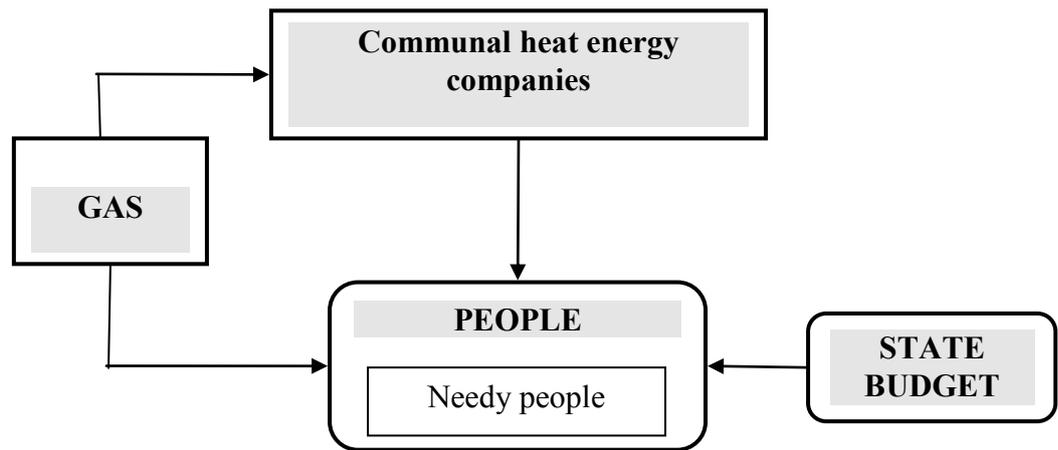


**Figure 3. Scheme of budgetary support of the DH system in Ukraine**

Thus, instead of a simple transparent scheme of support of needy groups of people at the account of the state budget as shown in picture 4, there is a complex system of budgetary support which:

- does not ensure the effective use of budget funds as it makes it more difficult for the Government and local self-government bodies to evaluate the real situation of funds use;
- eliminates market incentives and incentives for energy saving;
- creates favorable conditions for abuse;
- enhances and support consumer attitude of both people and communal heat energy companies;
- enhances cross-subsidization which, in its turn, promotes the development of individual systems of heating of residential premises and enterprises and has negative impact on DH development<sup>13</sup>.

<sup>13</sup> I. Zapatrina. Housing and Communal Infrastructure: Reforms and System of their Financial Support. K: National Academy of Sciences of Ukraine; Institute for Economics and Forecasting, 2010.



*Figure 4. Improved scheme of budgetary support of the DH system in Ukraine*

In addition, the **problems** of functioning of the existing system of housing subsidies include:

- ***High cost of administering*** social assistance and housing subsidies. The system of administering benefits and subsidies remains complicated for people (especially for aged persons), social protection services and communal enterprises having to perform calculations of benefits and subsidies.
- ***Drawbacks in the system of management and control.*** Ineffective management of the social assistance system, drawbacks in the system of monitoring and evaluation of functioning of the social assistance system including the system of housing benefits and subsidies reduce the effectiveness of using budget funds.
- ***Problems of methodological support.*** The right to participate in the program of housing subsidies is based on comparison of expenses for communal services and fuel with the total household income. The current method of calculating total household income cannot adequately evaluate and verify all components of indirect revenue (income from land holdings, income from rent and sale of property, not declared income from employment, the cost of social benefits etc.). Thus, the income estimated by social services may differ from the actual household income.
- ***Deficiencies of information provision.*** The work on creating a Unified register of recipients of all types of social assistance is far from its completion. Although in 2010 a special information system “Our home. Housing subsidies” was developed and distributed in regions, the problem of information

exchange between consumers, housing and communal services providers and authorities which are the participants of subsidies allocation process remains topical.

Moreover, the problems of information provision include the lack of proper interaction between the participants of the process, low level of executive discipline of certain authorities concerning untimely submission of information upon the requests of the bodies of labor and social protection of people.

## **5. Assessment of resolving the problems of housing subsidies**

From the first years of the housing subsidy system implementation certain steps have been made for its improvement. The most important changes to simplify the provision of these subsidies were introduced in 2006 and 2010. However, these changes were of a fragmentary nature because the real results of the improvement of housing subsidies can be achieved within the reform of social assistance in whole.

The main documents prescribing key areas of reforming the system of social assistance include:

- ***The Strategy of Poverty Reduction*** (Decree of the President of Ukraine dated 15.08.2001 № 637 “On the Strategy of Poverty Reduction”, CMU’s Resolution dated 21.12.2001 № 1712 “On Approval of the Integrated Program of Implementation of the Strategy of Poverty Reduction”);
- ***Key Areas of Improvement of Social Transfers to People*** (Decree of the President of Ukraine dated 10.05.2006 № 359/2006 “On Key Areas of Improvement of Social Transfers to People”, Instruction of the Cabinet of Ministers of Ukraine dated 29.11.2006 № 585-r “On Approval of the Action Plan to Implement Key Areas of Improvement of Social Transfers to People”);
- ***The Strategy of Ordering of the System of Providing Privileges to Certain Categories of Citizens by 2012*** (CMU’s Resolution dated 03.06.2009 № 594-r “On Approval of the Strategy of Ordering of the System of Providing Privileges to Certain Categories of Citizens by 2012”, CMU’s Resolution dated 07.10.2009 № 1192-r “On Approval of the Action Plan to Implement the Strategy of Ordering of the System of Providing Privileges to Certain Categories of Citizens by 2012”);
- ***The National Program of Reforming and Development of the Housing and Communal Economy for 2009-2014*** (Law of Ukraine dated 11.06.2009 № 1511-VI);

- The Program of Economic Reforms of the President of Ukraine for 2010-2014 ***“Prosperous Society, Competitive Economy, Effective State”*** (developed by the Committee for economic reforms of the President of Ukraine and approved on 02.06.2010).

These documents stipulate both approaches to reforming the system of social assistance and setting specific tasks and terms of their completion (table 8). Let us analyze the level of completion of these tasks as of today.

The Program of Implementation of the Strategy of Poverty Reduction ended in 2009. The completed tasks of the program include the improvement of the mechanism of providing housing subsidies to people in 2006. Furthermore, the establishment of the regulatory legal framework for the development of competitive environment in the sphere of providing housing and communal services and determining state social standards in the sphere of housing and communal services has started.

However, in general, according to the Accounting Chamber of Ukraine, about a quarter of the planned measures were not implemented or partially implemented. There was no transition from social benefits to targeted transfers, the measures started in 2003 in this direction were not completed even at the level of the pilot project.

A unified information and analytical system of labor and social protection bodies integrated with the information systems of other central executive bodies has not been established, which makes it impossible to implement a unified system of management and control over social transfers to people.

Decree of the President of Ukraine dated 10.05.2006 № 359/2006 ***“On Key Areas of Improvement of Social Transfers to People”*** determined key areas of improvement of social assistance system for 2006-2009.

The measures implemented according to this Decree include the research on the development of methodological principles for the reception of citizens by the bodies of labor and social protection according to the “single window” principle, improving the assessment of poverty of households, improving the method of calculation of total family income for all types of social assistance etc..

In addition, the measures have been taken to simplify the procedures for allocation of all kinds of state social assistance and improve the regulatory provision of commercially reasonable estimated rates, on the basis of which housing subsidies to people are allocated;

The implementation of some important measures was performed outside the terms of this document. For instance, the implementation of the measures connected with the introduction of an electronic social card started from the second half of 2010 after the adoption of CMU’s Resolution dated 11.10.2010 № 947 ***“On Implementation of Electronic Social Card”*** stipulating an experiment on the

establishment of the information analytic system of regional administration and implementation of an electronic social card in the Autonomous Republic of Crimea, Kyiv, Kharkiv and Chernivtsy regions in 2010-2011.

The implementation of other measures is ongoing. It concerns the following tasks:

- the establishment of national networks of formation of the unified database of recipients of state social assistance and the Unified register of persons entitled to benefits which are integrated with the databases of other agencies (such as the State Tax Administration, the Pension Fund of Ukraine, the State Employment Service, the funds of state social insurance, state bodies of civil registration);
- the implementation of the “single window” principle during the allocation of social assistance.

However, the main task stipulating the formation of an integrated system of management and control over provision of social transfers to people by 2009 remained uncompleted.

The tasks regarding the improvement of the system of housing subsidies have not been completed. In particular, today the issues of integrating the program of housing subsidies into the system of state social assistance and implementing the cash form of providing housing subsidies on the basis of estimated rates remain uncompleted.

***The Strategy of Ordering of the System of Providing Privileges to Certain Categories of Citizens by 2012*** approved by the Cabinet of Ministers of Ukraine stipulated specific actions for 2010-2012, The fact of the development and adoption of such Strategy can be considered as the pre-term completion of the tasks of *the National Program of Reforming and Development of the Housing and Communal Economy for 2009-2014*, the action plan of which stipulated that in 2010 the Ministry of Labor and Social Policy together with other bodies of central power had to develop the draft Concept of targeted provision of benefits to people.

The Strategy determined the key area of reforming the system of benefits for housing and communal services – keeping the current procedure of providing benefits to the limited category of citizens:

- persons, widows (widowers) and parents of the dead persons who have special merit for Fatherland or special labor services for Fatherland,
- war veterans and persons covered by the Law of Ukraine “On the Status of War Veterans, Guarantees for their Social Protection”
- liquidators of the Chernobyl accident and their widows (widowers)

- persons disabled since childhood and disabled children receiving social assistance.

The Strategy envisages that by 2010 the suggestions for amending the respective laws on benefits should have been prepared, and during 2011-2012 the provision of benefits to certain categories of citizens within the established consumption rates (for housing and communal services, purchase of liquefied gas, solid and liquid stove fuel) with regard to their income should have been introduced.

The analysis shows that the Strategy's actions regarding the benefits for payment for housing and communal services remain have not been implemented by today.

The Program of Economic Reforms of the President of Ukraine for 2010-2014 "***Prosperous Society, Competitive Economy, Effective State***" approved in 2010 is presently the main program of activities of the President and Government of Ukraine.

The main tasks of the Program for 2010 in the sphere of social policy include:

- introducing amendments to the legislation on consumption rates for services when providing social assistance;
- developing the methodology of social monitoring and audit of the programs of social support, assessment of the income of applicants for social assistance using direct and indirect methods for determining income including the property in disposal;
- developing the matrix of the types of social support and holding audit of the types of social assistance and benefits.

According to the program, since 2011 the transition to the principle of targeting for all types of social support (subject to exceptions) should be made, which stipulates full integration of housing benefits in the system of housing subsidies. The exception is keeping the existing procedure of providing benefits for the birth or adoption of a child, to the persons disabled since childhood and disabled children, as well as the persons who have special merit for Fatherland. Apparently, this list is slightly different from the list provided in *the Strategy of Ordering of the System of Providing Privileges to Certain Categories of Citizens by 2012*, which emphasizes the overall drawback of legislation in this area, namely the inconsistency of regulatory legal acts.

The analysis of the existing problems in the sphere of housing subsidies proves that the actions of the Program were implemented not at the sufficient level in 2010. In particular, it concerns the necessary amendments to the legislation,

which prevents the transition to the principle of targeting for social assistance in whole and integration of housing benefits in the system of housing subsidies.

So the attempts of improving the legislation in these sphere are of fragmentary nature and do not resolve the problem of the formation of an integrated system of social protection of people. Modern legal regulation of the issues of functioning of the system of social assistance has no systemic character although there is strong need in it.

Today the process of reforming the existing benefits system is continuing. The issues of establishing the institutional and legal framework for the gradual, phased implementation of cash form of providing subsidies according to their types and categories of recipients of benefits have not been yet resolved. The issues of establishing regulatory legal framework for a unified procedure of providing benefits and other types of social assistance are still pending.

Thus, the topical issues include the improvement of the system of housing subsidies as a component of the social assistance system and establishment of the universal legal framework for further reforming of the system of housing subsidies.

The key areas of improvement of regulatory legal framework of functioning of the effective system of housing subsidies should include:

- gradual legislative replacement of benefits for housing and communal services with targeted subsidies;
- establishment of the regulatory framework for directing social assistance in the form of housing subsidies to the poorest groups of people;
- accounting of recipients of housing benefits and subsidies within the unified register of social assistance recipients;
- regulatory provision of constant monitoring of social assistance.

**Table 8**

**The main efforts for reforming of the social assistance system prescribed at the legislative level**

<i>Years</i>	<i>Key areas, tasks, actions of reforming</i>
2001-2009	<p><b>The Strategy of Poverty Reduction</b>            (Decree of the President of Ukraine dated 15.08.2001 № 637 “On the Strategy of Poverty Reduction”, CMU’s Resolution dated 21.12.2001 № 1712 "On Approval of the Integrated Program of Implementation of the Strategy of Poverty Reduction”);</p>
2005-2009	<p>Reform of the system of social protection of people by means of enhancing targeting of social assistance is one of the key areas of poverty reduction.            Key tasks:</p>

	<ul style="list-style-type: none"> <li>- certain benefits should be replaced with social services;</li> <li>- improvement of the mechanism of providing subsidies for housing and communal services to people;</li> <li>- starting the establishment of the regulatory legal framework for the development of competitive environment in the sphere of providing housing and communal services and determining state social standards in the sphere of housing and communal services;</li> <li>- implementation of the consolidated system of targeted social assistance and social services.</li> </ul>
2006-2009	<p><b>Key Areas of Improvement of Social Transfers to People</b>  (Decree of the President of Ukraine dated 10.05.2006 № 359/2006 “On Key Areas of Improvement of Social Transfers to People”,  Instruction of the Cabinet of Ministers of Ukraine dated 29.11.2006 № 585-r “On Approval of the Action Plan to Implement Key Areas of Improvement of Social Transfers to People”);</p>
	<p>The main aim is the completion of the integrated system of management and control over provision of social transfers to people.</p> <p>Key areas and tasks:</p> <ol style="list-style-type: none"> <li>1. Enhancing the targeted approach to providing social assistance, primarily to poor families and the most vulnerable groups including: <ul style="list-style-type: none"> <li>- implementation of a cash form of providing housing subsidies on the basis of estimated rates;</li> <li>- integration of the program of housing subsidies in the system of state social assistance.</li> </ul> </li> <li>2. Simplification of the procedures of allocation of all types of types of state social assistance using the principle of allocation of all types of social assistance on the basis of one application;</li> <li>3. Implementing a new progressive technology of reception of citizens by the bodies of labor and social protection according to the “single window” principle, which will ensure new quality of service, by means of: <ul style="list-style-type: none"> <li>- applying an integrated approach to provision of all types of social assistance to which a person is entitled;</li> <li>- ensuring the efficient use of the funds of the State Budget of Ukraine and local budgets provided for the implementation of the programs of social protection of people;</li> <li>- increasing the effectiveness of work of experts of the bodies of labor and social protection of people;</li> </ul> </li> <li>4. Formation of the unified database of recipients of state social assistance and the Unified register of persons entitled to benefits which are integrated with the databases (registers) of the State Tax Administration, the Pension Fund of Ukraine, the State Employment Service, the funds of state social insurance, the state bodies of civil registration, establishment of the respective national networks;</li> <li>5. Formation of a modern information system for the purpose of the implementation of a plastic or other type of card (personal social passport). Development of the sample electronic social card and procedure of its use in the system of bodies of labor and social protection of people. Experimental testing</li> </ol>

	of an electronic social card in some regions.
<b>2009-2012</b>	<p><b>The Strategy of Ordering of the System of Providing Privileges to Certain Categories of Citizens by 2012</b> (CMU's Resolution dated 03.06.2009 № 594-r "On Approval of the Strategy of Ordering of the System of Providing Privileges to Certain Categories of Citizens by 2012", CMU's Resolution dated 07.10.2009 № 1192-r "On Approval of the Action Plan to Implement the Strategy of Ordering of the System of Providing Privileges to Certain Categories of Citizens by 2012")</p>
2009-2010	<p>Key area: Retaining the existing procedure of providing benefits for housing and communal services, transport and communication services, sanatorium and resort treatment etc. for:</p> <ul style="list-style-type: none"> <li>- persons, widows (widowers) and parents of the dead persons who have special merit for Fatherland or special labor services for Fatherland,</li> <li>- war veterans and persons covered by the Law of Ukraine "On the Status of War Veterans, Guarantees for their Social Protection"</li> <li>- liquidators of the Chernobyl accident and their widows (widowers)</li> <li>- persons disabled since childhood and disabled children receiving social assistance.</li> </ul> <p>Key tasks:</p> <ol style="list-style-type: none"> <li>1. Prepare the suggestions for introducing amendments to the laws regarding the issues of providing benefits to the most vulnerable groups of people and the persons having special merit for Fatherland on the basis of single principles and criteria within the legally prescribed consumption rates and norms;</li> <li>2. Increase the level of information and technical support of the bodies of labor and social protection of people: <ul style="list-style-type: none"> <li>- information support of the actions for the implementation of the Strategy;</li> <li>- arrangement of effective interaction of the bodies of legislative and executive power with public organizations and social partners.</li> </ul> </li> </ol>
2011-2012	<p>Ensure the provision of benefits to certain categories of citizens within the established consumption rates (for housing and communal services, purchase of liquefied gas, solid and liquid stove fuel) with regard to their income should have been introduced;</p> <p>Ensure monitoring of the compliance of actually consumed services with the provided benefits, improvement of the mechanism of their provision.</p>
<b>2009-2014</b>	<p><b>The National Program of Reforming and Development of the Housing and Communal Economy for 2009-2014</b> (Law of Ukraine dated 11.06.2009 № 1511-VI)</p>
2010	<p>Development of the draft Concept of targeted provision of benefits to people (owners: the Ministry of Labor and Social Policy, the Ministry of Economy, the Ministry of Finance, the Ministry of Fuel and Energy, the Ministry of Transport and Communication, the Ministry of Justice).</p>
<b>2010-2014</b>	<p><b>The Program of Economic Reforms of the President of Ukraine for 2010-2014 "Prosperous Society, Competitive Economy, Effective State"</b> (developed by the Committee for economic reforms of the President of Ukraine and approved on 02.06.2010)</p>
2010	<p>Key tasks:</p> <ul style="list-style-type: none"> <li>- introducing amendments to the legislation on consumption rates for</li> </ul>

	<p>services when providing social assistance;</p> <ul style="list-style-type: none"> <li>- developing the methodology of social monitoring and audit of the programs of social support, assessment of the income of applicants for social assistance using direct and indirect methods for determining income including the property in disposal;</li> <li>- developing the matrix of the types of social support and holding audit of the types of social assistance and benefits.</li> </ul>
2011-2012	<p>Key tasks and actions:</p> <ul style="list-style-type: none"> <li>- transition to the principle of targeting for all types of social support (except for the benefits for the birth or adoption of a child, to the persons disabled since childhood and disabled children, as well as the persons who have special merit for Fatherland);</li> <li>- integration of housing benefits in the system of housing subsidies;</li> <li>- establishment of a single social agency (on the basis of the structures of the Ministry of Labor and Social Policy) for providing complex services to people who need social support.</li> </ul>
2013-2014	<p>Tasks:</p> <ul style="list-style-type: none"> <li>- establishment of the State Social Inspection Agency within the Ministry of Labor and Social Policy;</li> <li>- implementation of monitoring of social programs and audit of the programs of social support of people;</li> <li>- ensuring complete accounting in the system of transportation and consumption of heat energy, cold and hot water for the participants of the programs of housing subsidies, installation of the necessary technological equipment for accounting of public transport services consumption;</li> <li>- implementation of a social assistance card.</li> </ul>

**Report**  
**on the Results of the Analysis of the Current and Perspective Tax**  
**Legislation of Ukraine on Tax Incentives for Energy Saving and**  
**Energy Efficiency Efforts**

Tax incentives as the way of the state support of energy saving and energy efficiency efforts implementation are prescribed in general and special tax laws of Ukraine, as well as in such legislative acts of Ukraine as programs.

**Tax incentives for energy saving under special laws in the**  
**sphere of energy saving**

The Law of Ukraine “On Energy Saving” №74/94-VR dated 01.07.1994 is a basic legislative act in Ukraine regulating the relationships in the sphere of energy saving.

According to Article 11 of the Law, the economic measures for energy saving provision include, inter alia, providing tax privileges to legal entities and natural persons in order to promote the development, introduction of patent inventions and use of energy saving technologies, equipment and materials.

Pursuant to Article 16 of the specified Law, encouraging energy saving is performed, namely, by means of granting tax privileges to enterprises – manufacturers of energy saving equipment, machinery and materials, instruments for metering, control and cost management of fuel and energy resources, to equipment manufacturers for use of alternative and renewable energy and alternative fuels; providing tax privileges to enterprises that use the equipment that runs on alternative and renewable energy, alternative fuels, setting the increased rates of depreciation of energy saving fixed assets. At the same time, the list of types of energy saving equipment subject to the increased rates of depreciation is established by the Cabinet of Ministers of Ukraine. The amounts of tax credit and other benefits are established under the laws of Ukraine.

The main areas of reforming of the housing and communal economy are identified in the National Program of Reforming and Development of Housing and Communal Economy for 2009-2014, as amended by Law of Ukraine № 1869-IV dated 24.06.2004. Energy saving in residential buildings is defined as one of the main issues which are essential for successful reforming of the housing and communal economy sphere. It stipulates that financing of the Program includes introducing a special regime of VAT taxation of housing and communal services and/ or heat supply services.

The use of tax mechanisms to encourage energy saving is stipulated by the Complex State Energy Saving Program of Ukraine approved by the Cabinet of Ministers of Ukraine on 5 February 1997, Resolution № 148. According to the above mentioned Program, creating favorable conditions for the development, production and implementation of energy efficiency technologies, machines and equipment for the implementation of energy saving efforts should be based on effective pricing, tax and depreciation policies, concessional lending for the respective programs and projects at the expense of state funds, state financing of research and development work in the sphere of energy saving and increasing energy efficiency and targeted funding of certain projects. Paragraph 5.1 of this

Program states that the objectives and functions of energy saving governance are prescribed in the Law of Ukraine “On Energy Saving” and exercised by means of the respective elements of governance including tax exemptions.

Tax incentives for energy saving efforts are stipulated by the Energy Strategy of Ukraine by 2030 approved by Instruction of the Cabinet of Ministers of Ukraine №145-r dated 15.03.2006.

In particular, the document envisages bringing certain provisions of the legislation on energy saving in line with the economic situation; namely, creating conditions for economic incentives for economic agents to increase energy efficiency of energy resources use. Resolving this problem requires drafting amendments to tax legislation with respect to restriction on assigning energy resources consumed by economic agents to gross costs and setting fees for overspending of energy above the rates of specific energy consumption.

It is envisaged that in view of the real state of economy of Ukraine the primary efforts on the implementation of economic energy efficiency mechanisms include:

- setting progressive rates of specific consumption of energy according to the procedure prescribed by law;
- introducing effective economic sanctions for inefficient use of energy resources (increased payment, taxes, fines);
- enhancing administrative responsibility for violations in the sphere of energy saving and energy efficiency.

After addressing these problems it is possible to apply economic incentives including cheap credits and exemption from taxation of part of income obtained due to the implementation of energy efficiency and energy saving technologies. The document envisages amendments to the Law of Ukraine “On Taxation System” with regard to including the fee for overspending fuel and energy resources to the list of taxes and fees imposed on the territory of Ukraine.

**Encouraging energy saving according to the tax legislation of Ukraine**  
***General principles of preferential taxation in Ukraine***

According to Article 92 of the Constitution of Ukraine, the taxation system, taxes and fees are set exclusively by the Laws of Ukraine.

On 1 January 1 2011 the Tax Code of Ukraine dated 10.02.2010 came into force. The Tax Code of Ukraine (hereinafter – the TCU) regulates the relations arising in the sphere of collection of taxes and fees including the relations in the sphere of tax incentives for certain activities/ taxpayers.

In accordance with paragraph 4.1.9 of Article 4 of the TCU the principle of stability is one of the main principles of Ukrainian tax legislation. It envisages, inter alia, that changes to any aspect of taxes and fees (including tax exemptions) cannot be introduced later than six months before the new budget period, in which new rules and rates will be applied. Taxes and fees, their rates and tax exemptions cannot be changed during the budget year.

Pursuant to paragraph 4.4 of Article 4 of the TCU, setting and cancelling taxes and fees, as well as tax exemptions are performed by the Verkhovna Rada of Ukraine, as well as the Verkhovna Rada of the Autonomous Republic of Crimea, village, town and city councils within their powers prescribed in the Constitution of Ukraine and laws of Ukraine.

According to paragraph 7.2 of Article 7 of the TCU, during tax setting tax exemptions and the procedure for their application can be provided. So tax exemptions are an optional element of the tax. In accordance with paragraph 4.7 of Article 7 of the TCU the reasons for granting tax exemptions and the procedure of their application are determined exclusively by this Code.

Pursuant to paragraph 12.2 of article 12 of the TCU, the powers of the Verkhovna Rada of the Autonomous Republic of Crimea include determining the size and providing additional tax exemptions within the amounts received by the budget of the Autonomous Republic of Crimea according to Article 69 of the Budget Code of Ukraine (subparagraph 12.2.3).

Pursuant to paragraph 12.4 of the TCU, the powers of village, town and city councils with regard to taxes and fees include adopting the decision on granting tax exemptions before the beginning of the next budget period, which results in changing tax obligations of taxpayers and comes into effect from the beginning of the budget period (subparagraph 12.4.3).

At the same time, according to subparagraph 12.3.7 of this Article, village, town and city councils are not allowed setting individual preferential rates of local taxes and fees for certain legal entities, individual entrepreneurs and natural persons or exempt them from payment of such taxes and fees.

We would like to draw your attention to the evolution of the position of the legislator on the right of village, town and city councils to set individual preferential rates or exempt individual taxpayers from taxes and fees.

Before the entry into force of the TCU, the general principles of taxes and fees collection, including the procedure for granting exemptions to taxpayers, were regulated by the Law of Ukraine “On Taxation System”. Pursuant to section 2 of article 1 of this Law (as amended by Law dated 02.18.1997 № 77/97-VR), it was envisaged that the Verkhovna Rada of the Autonomous Republic of Crimea, village, town and city councils may impose additional tax exemptions within the amounts received by their budgets. When applying this provision in practice, at least two basic questions arose:

- 1) whether the VR of the ARC and respective bodies of local self-government had the right to set individual tax exemptions, i.e. exemptions for individual taxpayers;

- 2) whether the specified bodies had the right to set only local tax exemptions or national tax exemptions as well, but within the amounts received by their budgets.

The Constitutional Court of Ukraine in its decision dated 16.02.2010 № 5-rp/2010 in the constitutional appeal of JSC Insurance Company Avante regarding the official interpretation of section two of Article 1 of the Law of Ukraine “On

Taxation System”, Article 15 of the Law of Ukraine “On Company Income Tax” pointed out that firstly, the introduction of individual tax exemptions or exemptions for certain taxpayers should not be considered as a manifestation of tax discrimination, unfair competition, creating a privileged position, violation of the principles of equality and unified approach to taxation. Secondly, the Constitutional Court decided that the Verkhovna Rada of the Autonomous Republic of Crimea, village, town and city councils had the right to directly set exemptions with respect to the national company income tax for communal enterprises according to section two of Article 1 of the Law of Ukraine “On Taxation System” if this tax is paid to the budget of the Autonomous Republic of Crimea, village, town and city budgets within the amounts to be credited to these budgets pursuant to the laws of Ukraine.

Law of Ukraine dated 20.05.2010 p. №2275-VI laid down section two of Article 1 of the Law of Ukraine “On Taxation System” as follows: the Verkhovna Rada of the Autonomous Republic of Crimea, village, town and city councils can set additional exemptions with respect to local taxes and fees, land tax and tax on the owners of vehicles and other self-propelled machines and mechanisms within the amounts received by their budgets. Providing such exemptions cannot violate the principles of equality, prevention of any manifestation of tax discrimination according to Article 3 of this Law. So the legislator, first, limited the scope of the VR of the ARC and specified bodies of local government to set tax exemptions solely on local taxes and fees, and two more taxes, land tax and tax on vehicle owners, within the amounts that come to their budgets. Second, it was legislatively prescribed that setting such exemptions would be performed on a nondiscriminatory basis.

Pursuant to the TCU, the bodies of local self-government have no right to set individual preferential tax rates of local taxes and fees for certain legal entities, individual entrepreneurs and natural persons or exempt them from payment of such

taxes and fees, including for the purpose of encouraging energy effort implementation by these persons.

According to paragraph 16.1.6 of Article 16 of the TCU, a taxpayer has to provide the information, data on amounts not paid to the budget in connection with the receipt of tax exemptions (the amount of exemptions received) and areas of their use (with regard to conditional tax exemptions, i.e. exemptions which are granted provided that the funds of an economic agent released as the result of exemption is used according to the procedure established by the state) to supervisory authorities.

According to paragraph 17.1.4, a taxpayer has a right to use tax exemptions if there are reasons for them and according to the procedure established by this Code.

The definition of tax exemption, general reasons and ways of their provision are laid down in Article 30 of the TCU.

Pursuant to this norm, tax exemption is *exempt* of a taxpayer from accrual and payment of a tax and fee, payment of a tax and fee *in a lower amount* if there are reasons prescribed in paragraph 30.2 of this article, which is stipulated by tax and customs legislation.

At the same time, the reasons for providing tax exemptions include the peculiarities that characterize a certain group of taxpayers, the type of their activity, object of taxation or character and social importance of costs incurred by them.

A taxpayer has a right to use tax exemption from the moment of occurrence of such reasons for its application and during the whole term of its validity.

A taxpayer has a right to refuse from the use of tax exemption or terminate its use for one or several tax periods unless otherwise provided by this Code. Tax exemptions not used by a taxpayer cannot be transferred to other tax periods, credited against future payments of taxes and fees paid from the budget.

Tax exemptions, the procedure and reasons for their provision are established according to the legislation of Ukraine on protection of economic competition exclusively by this Code, decisions of the Verkhovna Rada of the Autonomous Republic of Crimea and bodies of local self-government adopted under this Code.

The amounts of tax and fee not paid by an economic agent to the budget due to tax exemptions are accounted by such taxpayer. The accounting of such funds is performed according to the procedure prescribed by the Cabinet of Ministers of Ukraine.

Supervisory authorities compile consolidated information on the amounts of tax exemptions for legal entities and natural persons – sole proprietors and determine the losses of budget income as the result of granting tax exemptions.

Supervisory authorities exercise control over the correctness of provision and accounting of tax exemptions, as well as their proper use, if the areas of use are legally prescribed (on conditional tax exemptions), and the timely repayment of funds not paid to the budget as a result of exemptions if it was provided on repayable basis . Tax exemptions used improperly or untimely repaid return to the respective budget with penalties of \$120 per annum of the discount rate of the National Bank of Ukraine.

Tax exemption is provided by means of:

- a) tax deduction (rebate), which reduces the tax base to tax and duty
- б) reducing tax obligation after tax or fee accrual;
- в) setting a discount rate of tax and fee;
- г) exempt from payment of tax and fee.

Information on tax rebate and tax exemptions of a taxpayer – natural person is included in the record card of a natural person – taxpayer and notice (for natural persons who refuse from accepting a register number of a taxpayer record card because of their religious commitments) (paragraph 70.3.5 of article 70 of the TCU).

Using the amounts not paid to the budget resulting from the receipt (use) of tax exemption in an improper way or on the contrary to the terms or objectives of its provision under the law on the relevant tax, fee (obligatory payment) by a taxpayer (officials of a taxpayer) is a violation of tax legislation. Such violation is subject, firstly, to the application of a fine under paragraph 123.1 of article 123 of the TCU, and, secondly, to the payment of taxes, fees (obligatory payments) that were subject to charges without tax exemption to the budget. Paying the fine does not relieve such persons from liability for willful tax evasion.

**Tax incentives for energy saving according to the TCU:**

***Encouraging energy saving within the mechanism of value added tax collection***

Paragraph 197.16 of article 197 of the TCU stipulates exempt of the following import operations in Ukraine from tax:

1) equipment that runs on renewable sources of energy, energy saving equipment and materials, instruments for metering, control and management of fuel and energy resources consumption, equipment and materials for producing alternative fuels or energy from renewable sources of energy (paragraph 197.16.1);

2) materials, machinery, components used for production (197.16.2):

machinery running on renewable sources of energy (197.16.2.1);

materials, raw materials, machinery and components which will be used for producing alternative fuels or energy from renewable sources of energy (197.16.2.2);

energy saving equipment and materials, products, the operation of which ensures savings and the efficient use of fuel and energy resources (197.16.2.3);

instruments for metering, control and management of fuel and energy resources consumption (197.16.2.4).

Operations on importing such goods into the customs territory of Ukraine is subject to tax exemption if such goods are used by a taxpayer for their own production and if identical goods with similar characteristics are not manufactured in Ukraine. The list of such goods with UCCFEA codes is established by the Cabinet of Ministers of Ukraine.

Please note that tax incentives for energy saving and energy efficiency efforts within the mechanism of VAT collection was also stipulated by the Law of Ukraine “On Value Added Tax” (hereinafter – the Law on VAT). In paragraph 5.18 of article 5 of the Law on VAT it was stipulated that the following “operations on importation of the goods into the customs territory of Ukraine are subject to tax exemption:

machinery running on renewable sources of energy, energy saving equipment and materials, instruments for metering, control and management of fuel and energy resources consumption, equipment and materials for producing alternative fuels except for biological fuels (hereinafter – the goods) provided that these goods are used by the taxpayers for their own production and identical goods with similar characteristics are not manufactured in Ukraine. The list of such goods is established by the Cabinet of Ministers of Ukraine;

materials, machinery and components used for manufacturing the machinery running on non-conventional and renewable sources of energy, producing alternative fuels except for biological fuels, energy saving equipment and materials, products, the operation of which ensures savings and the efficient use of fuel and energy resources, instruments for metering, control and management of fuel and energy resources consumption provided that identical goods with similar characteristics are not manufactured in Ukraine. The list and scope of such goods are established by the Cabinet of Ministers of Ukraine.

Violating the requirements of purposeful use of such goods, the taxpayer shall increase the tax liabilities after the tax period, which accounts for such violation, by the amount of value added tax that had to be paid for these operations

at the time of importation of such goods and pay the penalty accrued according to the law”.

There are certain differences in formulating the specified tax exemption in the Law on VAT and in the TCU.

**First**, the Law on VAT envisages tax exemptions for operations on importation of such goods into the customs territory of Ukraine as equipment running on **non-conventional and renewable** sources of energy, as well as materials, machinery and components used for manufacturing the machinery running on **non-conventional and renewable** sources of energy. Instead, in the TCU tax exemptions cover operations on importation of such goods into the customs territory of Ukraine as machinery running on **renewable** sources of energy, as well as materials, machinery and components used for manufacturing the machinery running on **renewable** sources of energy (*two similar words in Ukrainian that have the same root are translated as renewable*).

The term “non-conventional and renewable sources of energy” is used in the Laws of Ukraine “On Energy Saving”, “On Heat Supply” and a number of other regulatory legal acts. The term “renewable sources of energy” is used in the Law of Ukraine “On Alternative Sources of Energy”. According to article 1 of the Law of Ukraine “On Energy Saving”, non-conventional and renewable sources of energy are defined as the sources that are continuously existing or periodically appear in the environment in the form of streams of solar power, wind, heat of the Earth, energy of seas, oceans, rivers, biomass. According to article 1 of this Law, alternative sources of energy include the renewable sources of energy like solar, wind, geothermal, wave and tide energy, hydropower, energy of biomass, gas from organic waste, gas of sewerage treatment plants, biogases and secondary energy resources including blast furnace and coke gases, methane gas of coal mines drainage, conversion of waste energy potential of technological processes. In the Law of Ukraine “On Alternative Sources of Energy” the term “renewable sources of energy” was originally used. However, that term did not reflect the meaning of

this term envisaged also by EU legislation (no one renews these energy sources, they are renewed themselves). In this regard, in Law of Ukraine № 601-VI dated 25.09.2008 the term “renewable sources of energy” was replaced with the term “renewable sources of energy” (*synonym in Ukrainian*). Based on the above legal definitions of “non-conventional and renewable sources of energy” and “renewable sources of energy”, the latter term covers the previous one as well. In this regard, differences in the formulation of the TCU are purely editorial in this case.

**Second**, the Law on VAT stipulates tax exemptions for operations on importation of such goods into the customs territory of Ukraine as equipment and materials **for producing alternative fuels except for biological fuels**, as well as materials, machinery and components used for manufacturing the machinery **producing alternative fuels except for biological fuels**. Instead, in the TCU tax exemptions cover operations on importation of such goods into the customs territory of Ukraine as equipment and materials for **producing alternative fuels or energy from renewable sources of energy**, as well as materials, raw materials, machinery and components which will be used for **producing alternative fuels or energy from renewable sources of energy**.

According to article 1 of the Law of Ukraine “On Alternative Sources of Energy”, alternative fuels include solid, liquid and gaseous fuel, which is a relevant alternative to traditional fuels and which is produced (extracted) from non-conventional sources and types of energy resources. Biological fuels (biofuels) in this Law refer to solid, liquid and gaseous fuel **produced from biologically renewable resources (biomass)** that can be used as fuel or a component of other fuels. According to article 3 of the Law, fuel is defined as alternative fuel, particularly, if it is produced (extracted) from non-conventional sources and types of energy resources (**including biomass**) or is a mixture of traditional fuel with alternative fuel, the content of which shall meet the technical standards of motor fuels.

Taking into account the premises, biofuel also refers to alternative fuels. Thus, in accordance with the TCU, tax exemptions cover operations on importation of such goods into the customs territory of Ukraine as equipment and materials for producing **alternative fuels (including biofuel)**, as well as materials, machinery and components used for manufacturing materials, machinery and components which will be used for **producing alternative fuels (including biofuel)**. This means that the exemption provided by the specified paragraph of the TCU covers a wider range of operations, compared to the Law on VAT.

**Third**, the Law on VAT envisaged that the list and scope of the goods were established by the Cabinet of Ministers of Ukraine, while the TCU provides that the Cabinet of Ministers of Ukraine shall only set the list of these products, however, indicating UCCFEA codes (Ukrainian Commodity Classification for Foreign Economic Activity).

Please note that the indicated provisions of the TCU became effective on 1 January 2011.

The list of energy saving materials, equipment, machinery and components that are exempted from import duty and the respective import operations are exempted from levy of value added tax is established by the Cabinet of Ministers of Ukraine, Resolution №444 dated 14.05.2008.

According to the above mentioned Resolution of the CMU, economic agents that import into the customs territory of Ukraine energy saving materials, equipment, machinery and components (hereinafter – goods) that shall be exempted from import duties according to paragraphs “ch” and “shch” of section one of article 19 of the Law of Ukraine “On Single Customs Tariff” and perform the operations with import of such goods into the customs territory of Ukraine, which according to sub-paragraphs 197.16.2 and 197.16.1 of paragraph 197.16, article 197 of the Tax Code of Ukraine are exempted from levy of value added tax, submit to the Ministry of Economic Development and Trade:

- application for exemption from value added tax on goods that are planned to be imported into the customs territory of Ukraine and payment of an import duty providing the name of goods, their code according to the UCCFEA codes (if importation of complete objects is planned – indicating the names of such objects and their code according to the UCCFEA codes), the quantity and value;
- a duly certified copy of a foreign trade contract (agreement) for supply of goods or any other document which is the basis for importing goods into the customs territory of Ukraine;
- information about the forecast profit of an economic agent (indicating obligatory payments to the state budget);
- conclusion of the state examination of compliance of the project, for which the goods are imported, with the requirements of regulations and normative technical documents in the sphere of energy saving indicating the name of goods, their code according to the UCCFEA codes (if importation of complete objects is planned – indicating the names of such objects and their code according to the UCCFEA codes);
- a document confirming the commitment of the economic agent to apply imported goods only for their own production with the respective justification and calculations;
- conclusion of the respective ministry or other central body of executive power stating that the goods with similar characteristics are not produced in Ukraine.

The Ministry of Economic Development and Trade prepares the draft decision of the Cabinet of Ministers of Ukraine on amending the list of goods including the suggestions of central bodies of executive power and submits it for review of the Cabinet of Ministers of Ukraine according to the established procedure.

During three years the economic agents that have imported goods in accordance with a duly approved list submit a monthly report in triplicate on the proper use of the goods before the 5<sup>th</sup> day of the month to the customs body registered the goods; two copies with a mark of acceptance of goods are sent by the customs authority monthly before the 13<sup>th</sup> day of the next period to the tax authority in the place of registration of the economic agent and the State Agency for Energy Efficiency and Energy Saving. The report form is developed and approved by the State Customs Service in agreement with the State Tax Service.

The customs authority in the place of registration of the economic agent and the State Agency for Energy Efficiency and Energy Saving perform control over the proper use of the imported goods according to the established procedure.

In the case of improper use of such goods the customs authority in the place of registration of the economic agent involving relevant central bodies of executive power take measures to recover outstanding amounts of import duty and value added tax according to the procedure and to the extent prescribed by law.

Thus, in accordance with paragraph 197.16 of article 197 of the TCU, violating the requirements of purposeful use of such goods, the taxpayer shall increase the tax liabilities after the tax period, which accounts for such violation, by the amount of value added tax that had to be paid for these operations at the time of importation of such goods and pay the penalty accrued on such amount of tax based on 120 percent discount rate of the National Bank of Ukraine, which was effective on the date of payment of tax obligations, and for the period from the date of importation of such goods to the day of increase of tax obligation.

### ***Encouraging energy saving within the mechanism of company income tax collection***

Article 158 of the TCU envisages the peculiarities of taxation of company income obtained due to energy efficiency technologies implementation.

80 percent of company income obtained from the sale of the goods of own production in the customs territory of Ukraine is exempted from taxation according to the list established by the Cabinet of Ministers of Ukraine (will be specified by the CMU):

machinery running on renewable sources of energy;

materials, raw materials, machinery and components which will be used for producing energy from renewable sources of energy;

energy efficiency equipment and materials, products, the operation of which ensures savings and the efficient use of fuel and energy resources;

instruments for metering, control and management of fuel and energy resources consumption;

machinery for producing alternative fuels.

The payer has to provide separate accounting of profit or loss received from the sale of the goods specified in sub-paragraph one of this paragraph on the customs territory of Ukraine.

The amounts released in connection with the tax exemption provision are directed by the taxpayer to increase production according to the procedure prescribed by the Cabinet of Ministers of Ukraine.

In case of violation of the proper use of funds the taxpayer has to determine income not taxed in connection with the provision of tax exemption and to tax it in the current period, as well as pay a penalty for the respective period in the amount established by this Code.

50 percent of income obtained from the implementation of energy efficiency efforts and energy efficiency projects of the companies included in the State register of enterprises, institutions and organizations which perform the development, implementation and use of energy efficiency efforts and energy efficiency projects is exempted from taxation.

The State register of enterprises, institutions and organizations which perform the development, implementation and use of energy efficiency efforts and

energy efficiency projects include enterprises, institutions and organizations involved in sectorial energy efficiency programs and based on the results of the examination according to the procedure established by the central body of executive power on ensuring efficient use of energy resources, received the conclusion of such body about the compliance of energy efficiency efforts and energy efficiency projects that have been implemented or are in the process of development and implementation with the criteria of energy efficiency and are included in the sectorial energy efficiency programs.

The central body of executive power on ensuring efficient use of energy resources is charged with keeping the State register of enterprises, institutions and organizations which perform the development, implementation and use of energy efficiency efforts and energy efficiency projects. The procedure of inclusion of companies in the State register of enterprises, institutions and organizations which perform the development, implementation and use of energy efficiency efforts and energy efficiency projects is approved by the central body of executive power on ensuring efficient use of energy resources.

The procedure of preferential taxation of company income received due to the implementation and use of energy saving measures was introduced by the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine on Promoting Energy Saving Measures” № 760-V dated 16.03.2007. This Law, in particular, amended article 7 of the Law of Ukraine “On Company Income Tax”, paragraph 7.21. This paragraph stipulated tax exemption for:

“7.21.1. Company income received from the sale of such types of goods on the territory of Ukraine according to the list established by the Cabinet of Ministers of Ukraine:

equipment running on non-conventional and renewable sources of energy;  
energy saving equipment and materials, products, the operation of which ensures savings and the efficient use of fuel and energy resources;

instruments for metering, control and management of fuel and energy resources consumption;

machinery for producing alternative fuels.

The amounts of funds released in connection with the tax exemption provision are directed by the taxpayer to increase production. In case of violation of the proper use of funds the taxpayer has to determine income not taxed in connection with the provision of tax exemption and to tax it in the current period, as well as pay a penalty for the respective period in the amount established by the legislation of Ukraine.

7.21.2. Income of the companies included in the State register of enterprises, institutions and organizations which perform the development, implementation and use of energy efficiency efforts and energy efficiency projects cannot exceed 50 percent of the amount of income subject to taxation.

The State register of enterprises, institutions and organizations which perform the development, implementation and use of energy saving efforts and energy efficiency projects include enterprises, institutions and organizations involved in sectorial energy saving programs and received the conclusion based on the results of the examination held by the State Energy Saving Inspectorate about the compliance of energy saving efforts and energy efficiency projects that have been implemented or are in the process of development and implementation with the criteria of energy efficiency and are included in the sectorial energy saving programs.

The National Agency for Efficient Use of Energy Resources is charged with keeping the State register of enterprises, institutions and organizations which perform the development, implementation and use of energy saving efforts and energy efficiency projects. The procedure of inclusion of companies in the State register of enterprises, institutions and organizations which perform the development, implementation and use of energy saving efforts and energy

efficiency projects is approved by the National Agency for Efficient Use of Energy Resources.”

Please note that the specified provisions of paragraph 7.21 of article 7 of the Law of Ukraine “On Company Income Tax” are effective by 01 April 2011. From thus date the Law of Ukraine “On Company Income Tax” loses effect and section III “Company Income Tax” of the Tax Code of Ukraine comes into effect.

We would like to highlight the following differences between the provisions of the TCU and the Law of Ukraine “On Company Income Tax”.

1) Regarding paragraph 158.1 of article 158 of the TCU:

First, as in the case of the analyzed tax incentives for energy saving within the mechanism of VAT collection, in article 158 of the TCU the term “non-conventional and renewable sources of energy” was replaced with the term “renewable sources of energy”.

Second, the term “energy saving equipment” was replaced with the term “energy efficient equipment”, which is more correct.

Third, the list of goods of own production was complemented with such goods as “materials, raw materials, machinery and components which will be used for producing energy from renewable sources of energy”.

Fourth, compared to the Law “On Company Income Tax”, the TCU stipulates tax exemption for 80% rather than 100% of income.

Fifth, both the Law “On Company Income Tax” and the TCU envisage that the amounts of funds released in connection with the tax exemption provision are directed by the taxpayer to increase production; however, under the TCU, it is performed according to the procedure established by the CMU. Compared to the Law, the TCU stipulates that the payer has to provide separate accounting of profit or loss received from the sale of the goods specified in sub-paragraph one of paragraph 158 on the customs territory of Ukraine.

2) Regarding paragraph 158.2:

First, both the Law “On Company Income Tax” and the TCU envisage that income obtained from the implementation of energy efficiency efforts and energy efficiency projects of the companies included in the State register of enterprises, institutions and organizations which perform the development, implementation and use of energy efficiency efforts and energy efficiency projects is exempted from taxation; however, the TCU clearly states that it is the income obtained from the implementation of energy efficiency efforts and energy efficiency projects.

Second, in the TCU, compared to the specified Law, the term “sectorial energy saving programs” was replaced with the term “sectorial energy efficiency programs”.

Third, pursuant to the specified Law, the examination is held by the State Energy Saving Inspectorate; however, according to the TCU, the examination is held according to the procedure established by the central body of executive power on ensuring efficient use of energy resources.

Fourth, it is envisaged that during the implementation of energy efficiency efforts and energy efficiency projects the taxpayer has to provide separate accounting of profit/ loss received from the implementation of such efforts and programs according to the procedure approved by the Cabinet of Ministers of Ukraine.

3) Regarding paragraphs 158.1 and 158.2:

In comparison with the norms of the Law, these norms of the TCU shall be effective during 5 years from the moment of the first profit because of the improvement of energy efficiency of production.

The procedure of inclusion of companies in the State register of enterprises, institutions and organizations which perform the development, implementation and use of energy efficiency efforts and energy efficiency projects is approved by Order of the National Agency for Efficient Use of Energy Resources №49 dated 01.04.2008.

Pursuant to the given Procedure for inclusion in the Register, legal entities submit the respective applications to the State Agency for Energy Efficiency and Energy Saving (according to annex 3).

The application for inclusion to the Register is accompanied with:

- copies of statutory documents;
- conclusion of the state examination about the compliance of energy efficiency efforts and energy efficiency projects that have been implemented or are in the process of development and implementation with the criteria of energy saving;
- copy of the approved sectorial energy efficiency program including energy efficiency efforts and energy efficiency projects of the legal entity certified by the respective body of executive power;
- calculations of expected losses of the state budget because of providing tax exemptions to the legal entity and proposals regarding the sources of their recovery;
- request of the ministry, other central body of executive power of the respective sector for the inclusion of the legal entity to the Register with confirmation of sources of recovery of income losses of the state budget.

According to article 22 of the Law of Ukraine “On Energy Saving” the state energy saving examination shall cover technological part of feasibility studies and construction projects of new construction and expansion (reconstruction, technical re-equipment, modernization) of existing facilities and enterprises with an annual consumption of fuel and energy of a thousand or more tons in terms of conventional fuel – by the decision of the owner in the case providing preferences (including tax exemptions) at the account of budget funds. Thus, according to article 24 of the indicated Law, a negative conclusion of the state energy saving examination is the basis for the improvement of projects and programs and elimination of defects in buildings, structures or engineering facilities in accordance with the conclusions of the examination. A positive conclusion of the

state energy saving examination is the basis for satisfying the application of the consumer of energy resources with regard to receiving subsidies, tax exemptions, financial and credit privileges at the expense of energy saving fund.

The state energy saving examination is held according to the Provision on the state energy saving examination approved by Resolution of the Cabinet of Ministers of Ukraine dated 15 July 1998 №1094.

The development of sectorial energy efficiency programs is stipulated by Instruction of the Cabinet of Ministers of Ukraine №1567-r dated 17.12.2008 “On Programs for Improving Energy Efficiency and Reducing Energy Resources Consumption”.

During the implementation of energy efficiency efforts and energy efficiency projects the taxpayer has to provide separate accounting of profit/ loss received from the implementation of such efforts and programs according to the procedure approved by the Cabinet of Ministers of Ukraine (will be specified by CMU).

The above mentioned provisions shall be effective during 5 years from the moment of the first profit because of the improvement of energy efficiency of production.

### ***Tax incentives within the mechanism of land tax collection and rent payments***

In accordance with paragraph 276.6 of article 276 of the TCU, the tax for land plots (within and outside localities) provided for the deployment of energy facilities that produce electricity from renewable energy sources is collected in the amount of 25 percent of the tax calculated in accordance with articles 274, 275, 278, 279 and 280 of this Code.

According to paragraph 288.5.2 of article 288 of the TCU, the amount of rent is set in the rental agreement, but the annual payment amount cannot exceed 3 percent of standard monetary evaluation for the land provided for the deployment,

construction, maintenance and operation of energy facilities that produce electricity from renewable sources of energy including the technological infrastructure of such facilities (production facilities, bases, distribution points (devices), electrical substations, electrical networks).

***Temporary measures of tax incentives for energy saving:***

The final provisions of the TCU (chapter XX) specify temporary peculiarities of collecting certain taxes and fees.

In particular, in accordance with paragraph 15 of subsection 4 “The Peculiarities of Collecting Company Income Tax”, the following income is exempt from taxation temporarily, until 1 January 2020:

- income of manufacturers of biofuel received from the sale of biofuel;
- company income received from the activity on simultaneous production of electricity and heat energy and/or production of heat energy using biofuels;
- income of manufacturers of equipment and machinery specified by article 7 of the Law of Ukraine “On Alternative Types of Fuel” for production and reconstruction of technical means and vehicles including self-propelled agricultural machinery and power plants that consume biological fuels received from the sale of this equipment and machinery and equipment produced in Ukraine

Pursuant to paragraph 17 of this subsection, income of electricity energy companies (class 40.11 group 40 of CTEA DK 009:2005) from the sale of electricity produced from renewable types of energy is temporarily, for 10 years, exempt from taxation since 1 January 2011.

***Fee in the form of target premium to the current tariff for electricity and heat energy except for electricity produced by qualified co-generation plants as the source of financing of energy saving efforts and encouraging energy saving***

Chapter 3 of section XIV “Special tax regimes” of the TCU envisages tax payment as the target premium to the current tariff for electricity and heat energy except for electricity produced by qualified cogeneration plants.

The fee in the form of target premium to the current tariff for electricity and heat energy has been collected in Ukraine since 2003. This fee was established by the Law of Ukraine dated 22.05.2003 №849-IV “On Amendments to the Law of Ukraine “On the State Budget of Ukraine for 2003” and Certain Legislative Acts” by means of introducing amendments to the Law of Ukraine “On Taxation System”.

Article 14 of the Law of Ukraine “On Taxation System” (lost effect) envisaged that the fee in the form of target premium to the current tariff for electricity and heat energy belonged to national obligatory payments. By their legal nature national fees are set by the Verkhovna Rada of Ukraine in special tax laws and collected on the entire territory of Ukraine. However, for this fee the exception has been made in the legislation of Ukraine: according to article 1 of the Law of Ukraine “On Taxation System”, the mechanism of collecting the fee in the form of target premium to the current tariff for electricity and heat energy is set by the Cabinet of Ministers of Ukraine together with the National Electricity Regulatory Commission of Ukraine. Such mechanism was approved by Resolution of the Cabinet of Ministers of Ukraine №2002 dated 24 December 2003 (lost effect based upon CMU’s Resolution №1236 dated 27.12.2010 due to adoption of the Tax Code of Ukraine).

Pursuant to paragraph 9.1.17 of article 9 of the TCU, the fee in the form of target premium to the current tariff for electricity and heat energy except for electricity produced by qualified co-generation plants refers to national taxes and fees.

According to article 310 of the TCU, the payers of the fee include the wholesale supplier of electricity and manufacturers of electricity who have a

license for the right of performing economic activity on electricity production and sell it beyond the wholesale electricity market, as well as heat energy (hereinafter – legal entities).

The relations connected with the production, transmission, supply and use of energy, ensuring energy security of Ukraine, competition and protection of rights of consumers and employees of the sector are regulated by the Law of Ukraine “On Electricity” № 575/97 dated 16.10.1997.

Pursuant to article 15 of this Law, purchase of all electricity produced at power stations, the capacity or output amount of which are higher than ceiling parameters, as well as at power stations that produce electricity using alternative sources of energy (except for blast furnace and coke gases, and using hydro power – produced only by small hydropower stations) regardless of the capacity or output amount of electricity (except for electricity produced at cogeneration plants, which are part of energy suppliers, for consumption within the territory of licensed activity), and all its wholesale sale is made in the wholesale electricity market of Ukraine. Functioning of other wholesale electricity markets is prohibited in Ukraine.

The wholesale electricity market of Ukraine functions in compliance with such requirements, namely:

all economic agents performing electricity production and supply have equal access to the wholesale electricity market of Ukraine and electricity networks services after obtaining the appropriate license for the right of performing such activities;

electricity is sold and purchased under the Rules of the wholesale electricity market of Ukraine;

prices for electricity of generating companies and wholesale prices are specified by the Rules of the wholesale electricity market of Ukraine;

all participants of the wholesale electricity market settle sale and purchase agreements for electricity with the economic agent performing wholesale supply of

electricity pursuant to the agreement, on the basis of which the wholesale electricity market is established;

in each billing period (month) the payment for electricity and services purchased by the wholesale supplier of electricity in this period is provided; the payment should be paid in equal percentage to each power generating company (except for economic agents producing electricity using alternative energy sources (except for domain and coking gases, and if using hydropower – small hydropower stations) and to the enterprise which performs centralized dispatching control over the united energy system of Ukraine and transmission of electricity via main and interstate electric networks. This payment is provided including final payments under the contract, on the basis of which the wholesale electricity market is established.

Pursuant to paragraph 2.1 of the Instruction on the procedure of issuing licenses by the National Electricity Regulatory Commission for performing certain types of economic activities approved by Resolution of the NERC №1305 dated 06.10.1999, the license is issued by the NERC for each type of activities separately including:

- electricity production (in volumes exceeding the level set by license conditions);
- combined generation of heat and electricity;
- heat production at cogeneration plants and plants using non-conventional or renewable sources of energy.

According to article 311 of the TCU the object of taxation is:

a) for the wholesale electricity supplier – the cost of released electricity not including VAT;

б) for legal entities – the cost of released electricity sold beyond the wholesale electricity market reduced by the cost of electricity produced by qualified cogeneration plants and/ or from renewable energy sources, and for

hydropower – only to the extent produced by small hydropower plants not including value added tax.

According to article 1 of the Law of Ukraine “On Combined Generation of Heat and Electricity (Cogeneration) and Use of Waste Energy Potential”, qualification of a cogeneration plant is determining the compliance with terms and conditions of performance of a cogeneration plant with the requirements (qualification indicators) of this Law by the central body of executive power in energy saving sphere. Accordingly, a qualified cogeneration plant is a cogeneration plant, the performance of which meets the requirements of this Law.

Pursuant to article 11 of this Law, cogeneration plants that release part or the whole volume of produced electricity to consumers apart from their own needs can be defined as qualified ones if they meet the qualifying parameters of one of two following conditions:

1) the waste energy potential of technological processes is used as the main fuel; heat production is not obligatory for such plants.

If additional fuel is used, the efficiency of using additional fuel during one year from the date of commissioning of the plant and each next 12 months should be not less than 42 percent.

If the burning additional fuel is used to support the designed electrical capacity of a cogeneration plant with a simultaneous temporary reduction of heat capacity of the waste energy potential with regard to its value adopted in the engineering design of a cogeneration plant, the cost of additional fuel should be coordinated with the central executive body in the sphere of energy saving;

2) traditional (organic) oil is used as the main fuel, while the amount of released heat should be at least 10 percent of the total production of electricity and heat during one year from the date of commissioning of the plant and each next 12 months; during the specified period the volume of released electricity and heat with regard to energy of the main and additional fuel should be not less than 42 percent.

Qualification of cogeneration plants is performed by the central body of executive power in energy saving sphere according to the procedure established by the Cabinet of Ministers of Ukraine. Such procedure was approved by resolution of the Cabinet of Ministers of Ukraine dated 29.11.2006 №1670. Qualification is valid within one year.

Qualification of a cogeneration plant, which is first commissioned, is performed according to design data and test results of cogeneration plant operation tests. Qualification of a cogeneration plant for each subsequent year after the expiry of its previous qualification is based on actual figures of performance of a cogeneration plant for the previous 12 months.

Pursuant to article 312 of the TCU, the fee rate is 3 percent of the cost of electricity actually released by the fee payer excluding VAT.

Please note that pursuant to paragraph 4 of the Mechanism of paying a fee in the form of target premium to the current tariff for electricity and heat energy approved by Resolution of the Cabinet of Ministers of Ukraine №2002 dated 24 December 2003 (lost effect on the basis of CMU's Resolution №1236 dated 27.12.2010 because of adopting the Tax Code of Ukraine), the fee amount was set by the NERC based upon the amount of fees approved by the law of Ukraine for the respective year. In particular, article 68 of the Law of Ukraine "On the State Budget of Ukraine for 2010" set forth that in 2010 total amount of the fee in the form of target premium to the current tariff for electricity and heat energy set by the NERC was 2,279,600 thousand UAH. Monthly amounts of the specified fee were approved by the National Electricity Regulatory Commission of Ukraine. For instance, in its Resolution №1573 dated 26.11.2010 the NERC set the amount of the fee in the form of target premium to the current tariff for electricity and heat energy for Public Enterprise Energorynok of 121,338,312.67 UAH for December 2010.

The procedure of calculation and payment of the fee is prescribed in article 313 of the TCU.

A calendar month is a basic tax (reporting) period for the fee.

Tax returns of the fee are submitted to the state tax service authorities by the payers of the fee within the terms specified for a monthly tax (reporting) period in the place of tax registration.

The form of a tax return for the fee in the form of target premium to the current tariff for electricity and heat energy except for electricity produced by qualified cogeneration plants is approved by Order of the State Tax Service of Ukraine №1026 dated 24.12.2010.

Tax liability of the fee for the basic tax (reporting) period is determined based on the rate of the fee and the cost of electricity actually released, excluding the cost of electricity produced by qualified cogeneration plants and small hydropower stations with the capacity up to 20 MW.

Legal entities – producers of electricity at small hydropower stations with the capacity up to 20 MW direct the funds in the amount of the fee for new construction and renovation and modernization of existing small hydropower stations with the capacity to 20 MW.

Control over the proper use of such funds is performed by the National Electricity Regulatory Commission of Ukraine (NERC).

The fee is paid by the payers of the fee within the terms specified for a monthly tax (reporting) period in the place of tax registration.

The State Tax Service has provided explanations of collecting the fee in its letter №4051/7/15-0217 dated 14.02.2011 “On ensuring payment of the fee in the form of target premium to the current tariff for electricity and heat energy except for electricity produced by qualified cogeneration plants”.

Pursuant to paragraph 21-1, section 2 of article 29 of the Budget Code of Ukraine, the fee in the form of target premium to the current tariff for electricity and heat energy except for electricity produced by qualified cogeneration plants (unless otherwise provided by the law on the State Budget of Ukraine) belongs to the revenue of the general fund of the State Budget of Ukraine.

According to article 2 of the Law of Ukraine “On the State Budget of Ukraine for 2011” dated 23.12.2010 №2857-VI, the revenues of the general fund of the State Budget of Ukraine for 2011 include the revenues of the state budget specified by section two of article 29 of the Budget Code of Ukraine. So in 2011 including the mentioned fee in the special fund of the State Budget of Ukraine is not envisaged.

Pursuant to Annex 1 “Revenues of the State Budget of Ukraine” to the Law of Ukraine “On the State Budget of Ukraine for 2011”, it is stipulated to include the fee in the form of target premium to the current tariff for electricity and heat energy except for electricity produced by qualified cogeneration plants in the amount of 260,000 thousand UAH in the general fund of the State Budget of Ukraine in 2011.

At the same time, the following expenditures are envisaged from the general fund of the State Budget of Ukraine (see Annex 3 to the Law of Ukraine “On the State Budget of Ukraine for 2011”):

construction of power units of nuclear, pumped storage plants, other electric power plants, cogeneration plants, construction and reconstruction of electricity transmission lines and substations, as well as providing cheap loans for creating storage of solid fuels for cogeneration stations – 80,000 thousand UAH (development expenditures);

implementation of the State target economic program of energy efficiency for 2010-2015 – 600,000 thousand UAH (development expenditures);

supporting the Incentive for energy efficiency and environment in Eastern Europe – 22,900 thousand UAH (consumption expenditures);

Financing energy saving efforts in 2011 is provided also at the account of the special fund of the State Budget of Ukraine.

Paragraph 24 of article 14 of the Law of Ukraine “On the State Budget of Ukraine” stipulates the state support of energy saving efforts through cheap loans (at the expense of the sources prescribed in paragraph 26 of article 4 of this Law –

finances for violating the legislation related to ensuring efficient use of energy resources).

Pursuant to paragraph 32 of article 14 of the specified Law, the support of the implementation of the Energy Strategy of Ukraine up to 2020 should be performed at the expense of the sources specified in paragraph 31 of article 4 (incomings within EU assistance programs) and paragraph 2 of article 10 (balance formed from the incomings within EU assistance programs).

Pursuant to paragraph 33 of article 14 of this Law, the implementation of EU assistance programs including, inter alia, the efforts for efficient use of energy resources and energy saving should be financed at the expense of incomings within EU assistance programs (paragraph 31 of article 4 of this Law). The procedures of using these funds are set by the Cabinet of Ministers of Ukraine for each EU assistance program on the basis of settled international agreements.

### ***Summary:***

Taking into account the premises, the tax legislation of Ukraine, namely the Tax Code of Ukraine, which came into effect on 1 January 2011, provides a number of tax incentives for energy saving and energy efficiency measures. In particular, tax exemptions provided within the collection of company income tax, value added tax, land tax, fee in the form of target premium to the current tariff for electricity and heat energy. A number of exemptions are permanent, other ones – temporary.

The bodies of executive power, first of all, the Cabinet of Ministers of Ukraine and the State Agency for Energy Efficiency and Energy Saving of Ukraine should develop a series of regulations aimed at implementing the provisions of the Tax Code of Ukraine, which provide tax incentives for energy saving including: the List of goods of own production, income from the sale of which on the customs territory of Ukraine shall be exempt from taxation (CMU); the Procedure of directing the amount of funds released in connection with the tax exemption

provision by the taxpayer to increase production (CMU); the Procedure of the examination of energy efficiency (the State Agency for Energy Efficiency and Energy Saving of Ukraine ), the Procedure of separate accounting of profit/ loss received from the implementation of energy saving efforts and energy saving projects (CMU).

As the above analysis shows the vast majority of tax incentives for energy saving and energy efficiency efforts are not a novel of the Tax Code of Ukraine. They were stipulated by the special tax laws of Ukraine regulating the mechanism of collection of certain taxes, in particular, the Laws of Ukraine “On Taxation of Company Income”, “On Value Added Tax”. Along with this, the wording of tax incentives in the TCU is slightly different from similar provisions of the special tax laws, which is emphasized in the report.

The fact of regulating the mechanism of collection of the fee in the form of target premium to the current tariff for electricity and heat energy is positive as by this time the given mechanism has been prescribed on the subordinate level – the Resolution of the Cabinet of Ministers of Ukraine.

Recognizing the need for tax incentives for the implementation of energy saving and energy efficiency in the economy of Ukraine, it should be noted that the sphere of buildings remained beyond the attention of the legislator. However, this sphere has significant potential to save energy and thus the state support of implementing energy saving and energy efficiency efforts in the sector of buildings is very important, especially in residential buildings, public buildings and buildings, in which the bodies of state power and local self-government are located. Introducing tax incentives for the implementation of energy saving and efficiency efforts in this sphere were suggested by the Project’s experts when developing the draft Law of Ukraine “On Energy Efficiency of Buildings”. However, this initiative was not supported by the Ministry of Finance of Ukraine.

**ANALYSIS OF REGULATORY LEGAL SUPPORT  
of the Activity of the National Commission of Communal Services Market  
Regulation of Ukraine Regarding the Use of its Administrative and Economic  
Sanctions Imposed on Economic Agents that Violate the Legislation in Heat  
Supply Sphere**

Imposing administrative and economic sanctions on the violators of the legislation in the heat supply sphere is one of the instruments of influence of the regulatory body on the activity of economic agents in certain spheres including heat supply sphere.

The legal principles of applying these instruments are prescribed in such legislative acts:

the Commercial Code of Ukraine dated 16.01.2003 № 436-IV;

the Law of Ukraine “On Natural Monopolies” dated 20.04.2000 № 1682-III;

the Law of Ukraine “On Heat Supply” dated 02.06.2005 № 2633-IV;

the Law of Ukraine “On the National Commission of Communal Services Market Regulation of Ukraine” dated 09.07.2010 № 2479.

The general provisions regarding the responsibility for violations in the commercial sphere are stipulated by the **Commercial Code of Ukraine**.

Pursuant to article 217 of the Commercial Code, economic sanctions include the methods of influence on the violator in the commercial sphere resulting in negative economic and/or legal effect for the violator.

According to article 238 of the Commercial Code of Ukraine, authorized bodies of state power including regulatory bodies can impose administrative and

economic sanctions on economic agents if it is provided solely by laws. So the responsibility of legal entities is envisaged solely by the laws of Ukraine regulating social relations in the respective sphere.

The procedure of applying administrative and economic sanctions to the subjects of natural monopolies by the regulatory bodies – National commissions – is prescribed in the Law of Ukraine **“On Natural Monopolies”**.

Pursuant to article 17 of the Law, the National commissions of regulation of activity of the subjects of natural monopolies impose fines on the subjects of natural monopolies, namely, for:

- untimely submission of information to the bodies regulating the activity of the subjects of natural monopolies – in the amount up to two hundred nontaxable incomes of citizens;
- non-submission or submission of knowingly invalid data to the bodies regulating the activity of the subjects of natural monopolies – in the amount up to one thousand nontaxable incomes of citizens;
- non-fulfillment or untimely fulfillment of the decisions of the bodies regulating the activity of the subjects of natural monopolies, violation of the rules and conditions of performing business in the spheres of natural monopolies and in adjacent markets (license conditions) – in the amount up to five thousand nontaxable incomes of citizens;.

The amount of fines imposed on the subjects of natural monopolies is credited to the State Budget of Ukraine.

The subjects of natural monopolies, on which the fine is imposed, shall pay it within thirty days from the date of receiving the decision on imposing the fine.

For each day of delay of the payment of the fine the penalty in the amount of one percent of the fine amount is charged.

If the subjects of natural monopolies refuse to pay the fine, the fine is imposed by the decision of the court.

So this Law provides the right to impose fines on the subjects of natural monopolies to regulatory bodies, the list of violations and the fine amount for these violations is specified.

The Law of Ukraine “**On Heat Supply**” is a special legislative act regulating the relations in the heat supply sphere.

The Law sets the powers of the National Commission of Communal Services Market Regulation of Ukraine and National Electricity Regulatory Commission of Ukraine regarding the fulfillment of control over compliance with license conditions and reviewing cases on violation of these conditions.

Pursuant to article 31 of the Law of Ukraine “On Heat Supply”, authorized bodies impose fines on the economic agents – legal entities, namely, for the following violations:

- non-submission or submission of knowingly invalid data to the state bodies – in the amount up to five hundred nontaxable incomes of citizens;
- non-fulfillment or untimely fulfillment of the decisions or instructions of the State Energy saving Inspectorate, State Energy Monitoring Inspectorate, National Electricity Regulatory Commission of Ukraine – in the amount of three hundred nontaxable incomes of citizens;
- for preventing or failure to provide access to the employees of the state supervision bodies or representatives of heat generating (heat supply) companies on duty to heat supply and heat consumption systems – in the amount up to two hundred nontaxable incomes of citizens;
- for violating license conditions or performing activity with an expired license – up to two thousand nontaxable incomes of citizens;

- for unjustified use of tariffs for heat energy production, transportation and supply or overstating the payment for heat energy actually released to consumer (customer) – in the amount up to three hundred nontaxable incomes of citizens;
- for supplying heat energy which parameters do not meet state standards, approved standards for heat energy, purchase and sale agreement terms, which is set forth by the representatives of the heat supply (heat generating) company in the respective act, – in the amount up to one hundred nontaxable incomes of citizens; after three such violations the heat supplier shall pay the same fine as for violating license conditions;
- for unauthorized disconnection of the consumer from the heat network of the heat supply (heat generating) company before the end of the purchase and sale contract for heat energy – in the amount up to five hundred nontaxable incomes of citizens;
- for water distribution from heating systems through taps and other devices; unauthorized connection to heating systems without settling a purchase and sale contract for heat energy; for operation with broken seals on commercial heat meters or their operation with the expired term of calibration – in the amount up to two hundred nontaxable incomes of citizens;
- for failure of heat networks owners to connect a heat generating plant or heat energy consumer to the heat network located on the territory which belongs to the owners if the connection terms are met – in the amount up to three hundred nontaxable incomes of citizens;

The cases on imposing fines for violations specified in this article shall be reviewed by the bodies of state power (inspectorates) and regulatory bodies within their competence.

The amounts of fines imposed by the bodies of state power (inspectorates) and regulatory bodies shall be credited to the State Budget of Ukraine.

An economic agent is obliged to pay the fine within fifteen days from the day of obtaining the order for its imposition.

If the fine is not paid within the specified term, it is charged through court.

The decision on fine imposition in cases on violations can be appealed in court.

Thus, the Law of Ukraine “On Heat Supply” provides the right to fulfill control over compliance with license conditions and review cases on violating these conditions, impose sanctions on economic agents for violations in heat supply to the National Commission of Communal Services Market Regulation of Ukraine and National Electricity Regulatory Commission of Ukraine. In comparison with the Law of Ukraine “On Natural Monopolies”, the number of violations is significantly expanded.

The legal framework for arrangement of activity of the National Commission of Communal Services Market Regulation performing state regulation in the heat supply sphere are prescribed in the Law of Ukraine “**On the National Commission of Communal Services Market Regulation**”.

Paragraph 18 of section one, article 6 of the Law envisages the right of the Commission to make decisions on imposing administrative and economic sanctions (fines) on the subjects of natural monopolies and economic agents in adjacent markets in the cases and amounts envisaged by Law.

However, this Law regulates only the procedure of applying administrative sanctions according to the Code of Ukraine on Administrative Violations and lacks the provisions on the cases and amounts of administrative and economic sanctions. So the mentioned Law does not set the conditions and procedure of applying administrative sanctions, provide the list of violations, specify the fine amount.

## **Conclusion**

On the basis of the analysis of the mentioned legislative acts the following conclusions can be made:

I. The laws of Ukraine “On Natural Monopolies”, “On Heat Supply”, “On the National Commission of Communal Services Market Regulation” envisage the right of the regulatory body including the National Commission of Communal Services Market Regulation to impose administrative and economic sanctions (fines) on economic agents.

II. The laws of Ukraine “On Natural Monopolies” and “On Heat Supply” specify the conditions and procedure of applying sanctions, the list of violation and the fine amount. At the same time, the provisions of the mentioned laws regarding the list of violations and the amount of fines do not agree with each other.

III. The Law “On the National Commission of Communal Services Market Regulation” envisages the right of the Commission to make decisions on imposing administrative and economic sanctions (fines) on the subjects of natural monopolies and economic agents in adjacent markets; however, it does not specify the conditions and procedure of applying sanctions and does not provide the list of violation and the fine amount. So in the process of reviewing cases on violating the legislation in the heat supply sphere and imposing fines the Commission will have to apply the provisions of the Laws of Ukraine “On Natural Monopolies” and “On Heat Supply”, inconsistency of the provisions of which can result in losing such leverage as applying administrative and economic sanctions by the National Commission of Communal Services Market Regulation.

IV. Summarizing the above, we can conclude that at present the procedure of applying administrative and economic sanctions by the National Commission of Communal Services Market Regulation prescribed by the legislative acts requires improvement.

## **Recommendations**

The problem of applying administrative and economic sanctions by the National Commission of Communal Services Market Regulation can be resolved within the complex improvement of legislative acts including:

amendments to the Laws of Ukraine “On Natural Monopolies” and “On Heat Supply” for the purpose of ensuring consistency of the provisions concerning the responsibility of the subjects of natural monopolies and economic agents in adjacent markets;

amendments to the Law of Ukraine “On the National Commission of Communal Services Market Regulation” on administrative and economic responsibility of economic agents performing activity in the communal services market.