

# New Rules for Electricity Market and Utilities



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Upon signing the Association Agreement with the European Union, Ukraine undertook several obligations regarding the harmonization of its own legislation in various spheres.

One of the major points were obligations in energy sector. Ukraine's energy regulations are currently significantly behind modern approaches to regulations on this market. The absence of a free market for gas and electricity was a particular concern to Europe.

In 2015 the new *Law On Natural Gas Market* was adopted and completely new legislation for this market was introduced. The most important changes were division of suppliers and carriers of gas, were supposed to be independent from each other. In theory new regulations should have allowed a person to purchase gas from one supplier at his or her own choice rather than the supplier who actually had a gas network connected to it.

Unfortunately, the market transformation took more than a year, mostly due to the delays with approval of various legislative acts by the ministries and special regulatory bodies. Moreover, after the all necessary basic legislation was approved, the market still had significant problems in practice.

Nevertheless, reform of gas can be generally described as successful. Regardless of current problems the basic market structure was formed, and all its members are slowly getting used to new rules while the state continues to improve regulations.

At the same time, after the adoption the new law on gas other reforms were stalled due to various lobbies from energy generation companies. In particular, the new law on electricity market and the new law on utility services. The latter was even more crucial

for implementation due to the fact that a new system of subsidies for the population came into effect which depended on it.

At last in 2017 both new laws were adopted and should come into force on 10 June 2018 with some critical provisions from 1 July 2019. All the required subordinate legislative acts should be adopted by this date. What changes do the new laws bring?

The newly adopted *Law On Electrical Energy Market* was adopted on 17 April 2017 and should be the outcome of more than three years of successive changes to introduce competition to the energy market.

The main change made by the Law is the final termination of the State Company Enerhorynok, which was a monopolistic purchaser of all energy from all generating companies. Enerhorynok then "mixed" energy from all sources (cheap from nuclear generation and expensive from renewable sources) and created an average tariff for industry and individual consumers. In addition, the tariff for industry was higher than the tariff for individuals was subsidized (in recent years approximately 30-35% of the industry tariff was subsidy for the population's tariff).

According to the new Law, Enerhorynok will be closed. All general consumers will buy energy on the energy exchange, where one will be able to choose supplier and how much to pay for electricity.

In addition, direct supply agreements between a consumer and energy generating company are allowed. This will be mostly used by large consumers but can significantly decrease cost of electricity for those ones buying directly from nuclear plants.

At the same time, there are also some problems with new regulations, as mentioned by experts.

First of all, it should be noted that the exchange market will not most likely be available for small consumers, namely the general population and small companies. They would have to buy energy from their regional supply company (or "Oblenerho", like now), and won't be able to choose energy supplier and price. It means that the actual tariff for such consumers will be dependent on the price at which the Oblenerho was able to buy the electricity on the exchange. This also creates a significant position for possible abuse by Oblenerhos and methods of control against this are still not entirely developed and introduced.

The second critical problem is the increase of energy price for the people. The new market model does not provide mechanism for all kind of subsidies in the calculation of the tariff (except for direct subsidies to energy generating companies). The electricity price for people will be increased and number of non-payers will grow. It is still unclear how the state will solve this problem.

Thus, it is still debatable as to how the new *Law On the Electrical Energy Market* will affect the energy market. It is clear that large consumers (i.e. those ones able to sign direct supply agreements) win from the new regulations as, according to calculations made by experts, the tariff for them (including the payment for transportation) will be around half of the current one.

At the same time, small companies with low consumption will more likely suffer from the increase in tariffs. Most experts are sceptical as to whether the Oblenerhos will be able to find and purchase low price electricity from the electricity exchange, as such energy will be immediately purchased by industry.

Another significant law adopted in 2017 is the *Law On Housing and Utility Services* which was adopted on 9 November 2017. The Law should also come into force on 10 June 2018.

The new Law introduced several major changes to regulations of utilities, which significantly affect the market.

The first major change is the monetization of subsidies. The new Law allows the receipt of a subsidy in actual funds rather than a discount on the cost of services. This should theoretically allow consumers to use such funds to implement energy sav-



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Antika Law Firm has been providing legal services to corporate and private clients since 2010. During this time the firm has achieved a competitive advantage on the legal market, has been recognized by reputable international and Ukrainian guides such as The Legal 500 EMEA, Chambers Global, Chambers Europe, IFLR1000 Energy and Infrastructure, IFLR1000 Financial and Corporate, Best Lawyers, Ukrainian Law Firms, Top 50 Law Firms of Ukraine, Client Choice, The Top 100 Best Lawyers in Ukraine.

The firm received Legal Award 2012 in the nomination of "Law Firm — Breakthrough of the Year". The Firm was a finalist of the Legal Awards 2013 in the field of Antitrust, Litigation and Real Estate, in 2014-2016 — in the field of Energy.

Antika's team includes 15 highly-qualified lawyers, who have significant experience of various fields of legal practice.

The key practices of the firm include corporate, M&A, Banking and Finance, Arbitration, Energy, Antitrust, Private Clients, Land & Real Estate, Competition Law, Dispute Resolution, Legal expertise, Infrastructure and Logistics, PPP & Government relation.

The firm's main principles are high quality legal services provided in a timely fashion, strict confidentiality and a bespoke approach to every client's project. Having a good understanding of today's challenging business requirements and a deep knowledge of legal environment we bring an innovative, creative and practical problem-solving approach to all of our work.

The firm's clients are Ukrainian and international companies doing business in various industries including telecommunications, heavy, chemical, food, automotive industries, subsoil use, complex development, real estate and construction, wholesale and retail, media and sports, banks and financial services market. The following are representative clients: AWT Bavaria, Cadogan Petroleum, Chornomornaftogaz, Esan Eczacıbaşı Industrial Raw Materials, Energobank, Ghelamco, Heitman, Henkel Ukraine, Henkel Bautechnik Ukraine, Ibis Group of Companies, Imperial Tobacco, International Resources Group, Lantmannen Axa, Nadra Ukrayny, Nasosenergomash, ViDi Group, Ukrnafta. The firm also advises the World Bank, the European Bank for Reconstruction and Development, USAID, TACIS, UNDP, KfW, NEFCO on energy efficiency, utility and other projects being implemented in Ukraine.

The firm's partners possess many years of experience in providing business law advice. They are the members of national and international professional legal organizations, in particular the International Bar Association.

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ing measures (thereby reducing energy consumption) rather than just pay for the services. It is also not clear enough how this model will work in practice as these payments will begin from 2019.

It should also be noted that the new Law imposes the obligation to conduct capital repairs of the building by its residents, which should be additional motivation for them to implement energy saving measures by using the subsidies received.

Another significant change is mandatory insulation of meters for every utility. The services themselves will have to be divided into three costs: the cost of the consumed service, the cost of transportation (or cost of maintenance of the internal pipe network in the building) and the charge for connection.

The new Law also regulates in detail all matters connected to housing service companies. The old municipal services pro-

viders will have the same status as private ones and it is expected that competition will reduce tariffs.

In general the new Laws are an important part of energy reform conducted in Ukraine. While there are number of problems and possible gaps in regulations, they introduce an entirely new system of relationships based on competitive market, thereby giving this sphere a boost in growth which was so necessary.