

State-Owned Enterprise Reform in the Electricity Sector in Ukraine



State-Owned Enterprise Reform in the Electricity Sector in Ukraine

Please cite this publication as:

OECD (2020), *State-Owned Enterprise Reform in the Electricity Sector in Ukraine*,

<http://www.oecd.org/corporate/soe-reform-electricity-sector-ukraine.htm>

This work is published on the responsibility of the Secretary-General of the OECD. The opinions expressed and arguments employed herein do not necessarily reflect the official views of the OECD or of the governments of its member countries or those of the European Union. This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

© OECD 2020

Foreword

In 2019, the OECD launched the project “*Supporting Energy Sector Reform in Ukraine*”, which falls under the OECD-Ukraine Action Plan. Building on an earlier OECD Review of *State-owned Enterprise Reform in the Hydrocarbons Sector in Ukraine* as well as the *Snapshot of Ukraine’s Energy Sector: Institutions, Governance and Policy Framework* (both issued in 2019), this multi-year project aims to improve investment, corporate governance of state-owned enterprises (SOEs), competition and anti-corruption practices in Ukraine’s energy sector. The project is implemented by the OECD in close collaboration with the Government of Ukraine, with the financial support of the Government of Norway. The work comprises analytical inputs, policy recommendations tailored to the energy sector based on OECD guidelines and instruments, as well as capacity-building activities aimed at various levels of government.

The aim of this Review is to support the Government of Ukraine in its efforts to reform corporate governance in the electricity sector, with a view to improving both its competitiveness on global markets and the energy security of Ukraine and its citizens. The Review assesses Ukrenergo – the transmission system operator – on the basis of the OECD *Guidelines on Corporate Governance of State-Owned Enterprises* (“SOE Guidelines”).

The present document is based on: (1) information obtained from interviews with over 30 stakeholders undertaken during two fact-finding missions to Kyiv in June and November 2019, respectively; and (2) information submitted by Ukrenergo and the Ukrainian authorities, including in response to the OECD’s questionnaire. The report is based on the most up-to-date information made available to the Secretariat as of late March 2020. The conclusions and recommendations were discussed with a high-level delegation in Ukraine in January 2020 and agreed at the March 2020 meeting of the OECD Working Party on State-Ownership and Privatisation Practices.

The Review involved key stakeholders from Ukraine, including the Ministry of Energy, the Ministry of Economic Development, Trade and Agriculture, the Ministry of Finance, and the Secretariat of the Cabinet of Ministers, among others. Ukrenergo as the state-owned company covered as a case study in this review was also closely involved in the project. Civil society, academia, private sector, and business organisations were consulted as part of the fact-finding process.

Table of contents

Foreword	3
Acknowledgments	8
Acronyms and abbreviations	9
Key findings	11
Part I. The Electricity and SOE Landscape	15
1. Background and context	16
1.1. Recent reforms at the national level	18
2. The electricity market in Ukraine	23
2.1. The electricity market reform	23
3. Ownership and governance in the Ukrainian electricity sector	29
3.1. Ownership in the electricity sector in Ukraine	30
3.2. Key challenges related to the electricity market	35
3.3. Electricity sector governance and policy framework	39
3.4. SOE ownership model and institutional set-up	42
Part II. Corporate Governance of Ukrenergo	45
4. Introduction	46
4.1. About Ukrenergo NPC JSC	47
4.2. Financial performance and tariffs	50
4.3. Taxation and dividends	53
4.4. Funding and financing of Ukrenergo	55
5. Governance framework	57
5.1. Background for corporate governance reform of Ukrenergo	57
5.2. Legal and regulatory framework of Ukrenergo	61
5.3. Ukrenergo's governing bodies and key operating divisions	62
5.4. Financial reporting and controls	74

6. Ownership arrangements	81
6.1. Ownership arrangements of Ukrenergo	81
6.2. Ownership policy and rationale for owning Ukrenergo	84
6.3. Objective setting and communication	85
6.4. Performance evaluation and monitoring	87
6.5. Board nomination and appointment	87
Part III. Conclusion and Recommendations	91
7. Conclusion and recommendations	92
7.1. Conclusions	93
7.2. Recommendations	94
Annex A. Responsibilities of Ukrenergo's governing bodies (excerpts from the October 2019 Charter)	103
Annex B. Draft Ownership policy of Ukrenergo (as of November 2019)	111
Bibliography	119
Tables	
Table 3.1. Ownership of electricity generation in Ukraine by Producers	31
Table 3.2. Ultimate beneficial ownership in primary energy supply for electricity generation	32
Table 3.3. Ownership of electricity supply and distribution in Ukraine	34
Table 3.4. Ownership of entities involved in the wholesale electricity market	35
Table 3.5. Institutions involved in electricity ownership, regulation and policy	40
Table 3.6. State ownership in Ukraine: institutional framework	44
Table 4.1. Ukrenergo's new functions in the wholesale electricity market	48
Table 4.2. Financial indicators for Ukrenergo: statement of financial position (in thousand UAH)	50
Table 4.3. Ukrenergo's financial results: Profit and Loss Statement, 2016-2019.	51
Table 4.4. Revenue transfers of Ukrenergo to the state budget (2014-2019)	54
Table 4.5. Financial support received by Ukrenergo in 2014-2018 (in thousand UAH)	56
Table 5.1. Main laws and regulations applicable to Ukrenergo	61
Table 5.2. Composition of the Supervisory Board of Ukrenergo (as of March 2020)	64
Table 5.3. Responsibilities of Ukrenergo's governing bodies	67
Table 5.4. Current composition of Ukrenergo's Supervisory Board Committees	68
Table 5.5. Board committees' responsibilities (as of November 2019)	69
Table 5.6. Current composition of the Management Board of Ukrenergo.	71
Table 5.7. Reporting requirements of Ukrenergo	75
Table 6.1. Entities involved in the supervision and regulation of Ukrenergo	83
Table 6.2. Approval process for Ukrenergo's key documents	86
Figures	
Figure 2.1. Structure of the new electricity market	27
Figure 3.1. Ownership arrangements in the electricity sector	29
Figure 3.2. Electricity generation in Ukraine in 2018, in percentage	30
Figure 3.3. Ownership entities in the energy sector of Ukraine	41
Figure 4.1. Corporate structure of Ukrenergo (as per September 2019)	49

Boxes

Box 1.1. Summary of the main tenets of SOE reform (2014-2019)	17
Box 1.2. Recent corporate governance set-backs	18
Box 1.3. National Wealth Fund	19
Box 2.1. Wholesale electricity market in Ukraine prior to reform	24
Box 2.2. The 2017 Law on the Electricity Market	25
Box 2.3. The Energy Strategy of Ukraine until 2035	26
Box 3.1. Green feed-in tariff	38
Box 3.2. OECD Typology of Corruption Schemes in the Energy Sector in Ukraine	39
Box 4.1. Cancellation of NEURC resolutions setting Ukrenergo tariffs for transmission and dispatching	52
Box 4.2. Investment Programme of Ukrenergo	54
Box 5.1. Action Plan for the reorganisation of Ukrenergo into a joint-stock company	58
Box 5.2. Supervisory Board member's liabilities	65
Box 5.3. Definition of "independence" for Supervisory Board members	66
Box 5.4. Resolution No. 141 on SOE board remuneration	69
Box 6.1. Competitive selection process of SOE board members in Ukraine (as amended in November 2019)	88

Acknowledgments

This Review received significant contributions from the Ukrainian Government, Ukrenergo and other stakeholders. The OECD would like to thank, in particular, the representatives of several Ukrainian ministries and government agencies for their co-operation and support during the fact-finding missions that took place. Special thanks go to the Ministry of Economic Development, Trade and Agriculture including First Deputy Minister Pavlo Kukhta and Nadia Kobyljak; Andriy Boytsun, Advisor to the Minister of Economy; Yulia Kovaliv, Deputy Head of the President's Office; the Ministry of Finance, including Deputy Minister Vasyl Shkurakov and Olena Dyachenko; the Secretariat of the Cabinet of Ministers, including Dmytro Shevchuk, Oleksandr Melnychenko and Oleksii Voloshyn; the Ministry of Energy, including Olga Buslavets, Illia Poluliakh, Vitalii Kushnirov, Denys Rudyka and Olena Ivanova; the State Property Fund, including Volodymyr Derzhavin and Oleksandr Vizir; the National Energy and Utilities Regulatory Commission, including Olena Antonova and Valerii Tsaplin; and the National Securities and Stock Market Commission, including Timur Khromaev and Dmytro Tarabakin. Thanks are also due to other stakeholders including members of the International Energy Donor Coordination Group; and experts from Dixi Group including Olena Pavlenko, Deloitte (Maksym Trehub and Anton Bychkov); Jonas Bylund and Andrii Tymoshenko from KPMG; and EY. Special thanks are also due to Ukrenergo's Supervisory Board, including Sevki Acuner and Olivier Appert; the Ukrenergo management board and team, including Vsevolod Kovalchuk, Volodymyr Kudritsky, Maksym Yurkov, Gleb Bakalov, Dmytro Sergiyenko, Andrii Nemyrovski, and Victoria Lomanova (among others). Thanks also go to colleagues in the International Energy Agency, namely Talya Vatman and Anna Petrus, for reviewing the draft report.

The authors would like to thank the peer reviewers from the OECD Working Party on State-Ownership and Privatisation Practices (WP SOPP) who participated in relevant missions and contributed to the formulation of conclusions and recommendations, in particular Lars Erik Fredriksson, WP SOPP Chair (Sweden) and Vladislavs Vesperis, WP SOPP Bureau member (Latvia). Special thanks are attributed to the Norwegian Government for their funding and project support, including Ambassador Ole T. Horpestad, Ellen Stie (Norwegian Ministry of Foreign Affairs); Petter Bauck (Head of Cooperation at the Norwegian Embassy in Ukraine); and Jan Petter Nore (Norwegian Agency for Development Cooperation).

Finally, the authors of this Review would like to give special thanks to members of the OECD Secretariat, including notably Gabriela Miranda, Country Manager for Ukraine for her indispensable support throughout the review process; Bill Tompson, Hans Christiansen, Tanya Khavanska, Sabine Zigelski, Oleksandra Onysko, and Miguel Castro for supporting the project and participating in relevant missions to Kyiv; Nina Chitaia, Mariia Melnyk, Yustyna Zanko and Geoff Upton for their valuable research inputs; and OECD local consultant Mykhailo Semchuk for his on-the-ground support in Kyiv. This publication and project were finalised thanks to inputs from Elisabetta Pilati, Katrina Baker, Sylvie Lebel and Pamela Duffin from the Directorate for Financial and Enterprise Affairs (DAF). This report was translated into Ukrainian by Liudmilla Taranina.

The Review was drafted by Arijete Idrizi and Sara Sultan, Policy Analysts in the OECD Corporate Governance and Corporate Finance Division (DAF).

Acronyms and abbreviations

CCO	Chief Compliance Officer
CEO	Chief Executive Officer
CMU	Cabinet of Ministers of Ukraine
DSO	Distribution System Operator
EBRD	European Bank for Reconstruction and Development
ENTSO-E	European Network of Transmission System Operator
ESU	Energy Strategy of Ukraine
EU	European Union
GDP	Gross Domestic Product
GNI	Gross National Income
GRI	Global Reporting Initiative
IAS	International Accounting Standards
IBRD	International Bank for Reconstruction and Development
IFI	International Financial Institution
IFRS	International Financial Reporting Standards
IMF	International Monetary Fund
IPO	Initial Public Offering
IPS	Integrated Power System
KWH	Kilowatt-Hour
MDETA	Ministry for the Development of Economy, Trade and Agriculture
ME	Ministry of Energy
MECI	Ministry of Energy and Coal Industry (renamed in September 2019)
MEEP	Ministry of Energy and Environmental Protection (renamed in May 2020)
NACP	National Agency for Prevention of Corruption
NEURC	National Energy and Utilities Regulatory Commission
NWF	National Wealth Fund
PSO	Public Service Obligation
RAB	Regulatory Asset Base
ROE	Return on Equity
SME	Small- and Medium-sized Enterprise
SOE	State-Owned Enterprise
SPF	State Property Fund of Ukraine
TSO	Transmission System Operator
UAH	Ukrainian Hryvnia
USD	United States Dollar

Key findings

Over the past five years, the Ukrainian government has adopted a number of key reforms, an important component of which deals with state-owned enterprises and state accountability. Those include the approval of a “Basic Ownership Policy” for the SOE sector in October 2018; the professionalisation of board nomination practices through the establishment of a Board Nomination Committee for the selection and nomination of CEOs and Supervisory Boards in large SOEs, the publication of annual aggregate ownership reports for the top-100 SOEs in Ukraine from 2014 to 2019, and more recently the launch of an e-reporting system with financial indicators of more than 3700 centrally-owned SOEs in 2019. In September 2019, the Honcharuk Government elaborated an ambitious reform agenda to pursue and deepen the reforms notably through adopting an ambitious privatisation programme and establishing a new holding company that would exercise ownership rights of a significant proportion of large SOEs (estimated to be around 69 companies) on behalf of the Government, and at arm’s length from policy-making.¹ Going forward, it will be important for successor governments to follow-through with the envisaged reforms, especially under mounting pressure to undertake structural reforms in light of the Covid-19 induced economic crisis.

These reforms include key changes to the legislation governing state property to better clarify ownership policies and empower SOE boards amongst other aspects. While these efforts constitute important advancements in view of improving and clarifying corporate governance of state-owned enterprises and state ownership practices in general, they are yet to be implemented and - specifically for the energy sector - would need to be combined with general improvements in the functioning of the sector (which is currently dysfunctional and prone to conflicts of interest) in order to be truly effective. Therefore, until key issues are anchored in more robust legislative and policy framework, the current reform remains fragile and subject to political intervention (as exemplified by a certain number of corporate governance setbacks).

In fact, given its importance for national security and independence, the energy sector has always been a particular focus area of reform. Within this framework, a few important SOEs, including Ukrenergo have undergone major corporate governance reform since the adoption of the Electricity Market Law in 2017. Most noticeable changes include the appointment of its first independent Supervisory Board in October 2018; the corporatisation of the public enterprise in July 2019, a move towards IFRS standards in corporate reporting, and more recently the creation of a more robust system of internal controls including the establishment of compliance and internal audit units over the course of 2019, amongst other aspects. While these changes take place against the background of ensuring Ukraine’s compliance with the Energy Community’s acquis to ensure integration with the European energy market, they also contribute towards improving Ukrenergo’s corporate governance practices and aligning them closer to the standards of the SOE Guidelines.

¹ Note that Ukrenergo would be left outside the scope of this model in view of legal requirements related to the EU Third Energy Package.

Despite this, however, important issues remain both at the company and state levels of governance. Issues of general nature include usual shortcomings associated with Ukraine's current decentralised ownership arrangements (e.g. conflicts of interest, limited monitoring capacity); the lack of a comprehensive state ownership policy and autonomy of SOEs, as well as frequent state interventions in SOEs' operational activities. Furthermore, the apparent lack of empowerment (mostly due to lack of resources and funding) of regulators such as the Anti-Monopoly Committee of Ukraine (AMCU) and the lack of independence of the National Energy and Utilities Regulatory Commission (NEURC), coupled with the general weakness of low enforcement powers in Ukraine, aggravates the risk that policy-makers make politically-motivated decisions at the expense of SOEs' commercial performance.

At the level of Ukrenergo, several overarching concerns remain in particular as regards the financial situation of the company, as well as potential corruption risks in procurement, amongst other aspects. The company is at the initial stage of implementation of its new Charter and only time will tell if the Government sees through its commitments to corporate governance reforms. The company is also facing an unstable and fast-changing regulatory environment to adapt to the realities of the newly reformed electricity market (with frequent changes in its tariff and public service obligations) for which it will be important to continue monitoring future developments and progress in order to establish a clearer picture of the company's corporate governance practices.

In this regard, a detailed set of recommendations have been identified in Chapter 3 of this Review as priority areas for reform. The recommendations are addressed to (1) the state as owner and shareholder of Ukrenergo; (2) the Ukrainian Government as regulator and policymaker in the electricity sector; and (3) Ukrenergo. These recommendations, draw on the OECD SOE Guidelines as a point of departure and should serve as a roadmap for reform going forward.

SOE REFORM IN THE ELECTRICITY SECTOR: ROADMAP FOR REFORM

STATE AS THE OWNER AND SHAREHOLDER OF UKRENERGO	<ol style="list-style-type: none"> 1. Upgrade the legal and regulatory framework to address inconsistencies between the Joint-Stock Company Law (and relevant amendments) and the Law on Management of State Property (and relevant amendments) 2. Establish a professionalised and centralised state ownership entity that can champion SOE reform 3. Strengthen the capacities of the ownership entity responsible for Ukrenergo
STATE AS POLICYMAKER AND REGULATOR OF THE ELECTRICITY MARKET	<ol style="list-style-type: none"> 1. Strengthen the independence and effectiveness of the energy regulator 2. Carry out the certification of Ukrenergo as the TSO 3. Ensure that SOEs operating in the electricity generation compete on equal footing with privately owned electricity producers 4. Organise the wholesale market in such a way that no market player will be discriminated against and real competition can take place, including from abroad 5. Ensure proper enforcement of unbundling rules for the DSOs to get retail competition started in the supply market 6. Launch the balancing and ancillary services market

	<p>7. Define a mechanism for settling the debt legacy in the electricity market</p> <p>8. Define and compensate public service obligations of Ukrenergo in a transparent and accountable way</p>
GOVERNANCE OF UKRENERGO	<p>1. Assign the necessary authority to the Supervisory Board to carry out core functions of appointing/dismissing the CEO, setting strategy, approving key documents and plans, and supervising management</p> <p>2. Alleviate the heavy reporting and approval system for key documents submitted to the shareholder and other government departments and agencies</p> <p>3. Improve the quality of financial and non-financial disclosure</p> <p>4. Allow Ukrenergo to access finance without shareholder approval</p> <p>5. Ensure that the highest standards are applied in the company's internal procurement and purchasing policy</p> <p>6. Empower the Supervisory Board to appoint and dismiss the Chief Compliance Officer and ensure a direct reporting line of the CCO to the Board</p> <p>7. Build up the internal audit and risk management capacity and ensure it develops linkages with the existing system of internal controls</p> <p>8. Establish a risk assessment of compliance risks related to the launch of the new electricity market</p>

Part I. The Electricity and SOE Landscape

1. Background and context

Over the past five years, successive governments in Ukraine have been implementing structural reforms aimed at restoring macroeconomic stability, strengthening economic governance and transparency, and generating sustainable economic growth. Not surprisingly, state-owned enterprise (SOE) reform has figured at the forefront of these efforts, which reflect reform-minded policies in government to tackle the large state-owned sector. They have been also supported by the international community and international financial institutions, due in part to loan conditionality and the country's commitments towards international partners, not least the European Union, with whom it signed an Association Agreement in 2014 and whose implementation requires a number of pro-market reforms, which are currently being carried out in Ukraine. A 2019 OECD Review on SOE Reform in the Hydrocarbon Sector in Ukraine outlined some of the main elements of reform [Box 1.1].

Box 1.1. Summary of the main tenets of SOE reform (2014-2019)

The following key reforms have been made over the last five years (although implementation is arguably still lagging):

- Approval of a “Basic Ownership Policy” for the entire SOE sector in October 2018;
- Adoption of a long-awaited Privatisation Law intended to facilitate both large-scale and small-scale privatisation transactions; as well as to enhance the transparency and integrity of individual transactions (2018);
- Professionalisation of board nomination practices by putting into place a board nomination committee charged with the selection and nomination of CEOs (in the absence of supervisory boards) and supervisory boards of large SOEs (2017);
- Upgrade of corporate governance practices in SOEs through the amendment of the State Property Management Law (2016) which aimed to:
 - Abolish voting instructions for state representatives on boards;
 - Enhance requirements for transparency and disclosure by individual SOEs;
 - Mandate independent external audit of economically important SOEs.
- Upgrade of corporate governance practices in joint-stock companies (2017), including requirements to have independent supervisory boards and formation of mandatory board committees chaired by independent members;
- Publication of annual aggregate ownership reports for the top-100 SOEs in Ukraine between 2014 and 2019;
- Establishment of ProzvIt, an e-reporting system which contains financial indicators of more than 3,500 state-owned enterprises that are under the control of central executive authorities. (Established as a replacement to the annual aggregate reporting in July 2019).

Source: (OECD, 2019^[1]) and additional updates

1.1. Recent reforms at the national level

Despite the laudable reform achievements cited above, there have been a number of worrying setbacks related to corporate governance reform in SOEs over the past year, including recent controversy surrounding what can be viewed as politically motivated intervention in the nomination and renewal processes of a number of SOE executives and supervisory board members (e.g. Naftogaz and Oschad Bank), which has worried the international community about whether recent corporate governance reforms can be safeguarded. Moreover, recent controversy surrounding the appointment and dismissal of heads of economically important SOEs has introduced further ambiguity with regard to corporate governance practices in companies with independent supervisory boards (Box 1.2).

Box 1.2. Recent corporate governance set-backs

In March 2019, the Government of Ukraine passed CMU Resolution No. 226 and Ordinance 176-p, which resulted in amendments to the Charter of Naftogaz. The amendments, made unilaterally by the government, have served to (1) strip the Supervisory Board of its powers including in its responsibilities over 100% owned subsidiaries of the Group and powers to hire/fire the CEO; (2) bypass the Supervisory Board on matters relating to subsidiary companies; and, (3) introduce further ambiguity on the ownership of Naftogaz over its assets. Furthermore, amendments to the CMU Resolution 777 have further created ambiguity with regard to the CMU's authority to intervene in the appointment and dismissal of SOEs under its ownership.

In August 2019, the National Bank of Ukraine (NBU) issued a decision to disqualify five members of Oschad Bank's newly elected supervisory board without disclosing grounds for disqualification – though it exercises the right according to the Law on Banks and Banking.² The Bank's board issued a statement that the disqualification was motivated by the Supervisory Board's decision to renew the incumbent CEO's contract without initiating an open competition for the position. The Supervisory Board is entrusted with powers to appoint and dismiss the Bank's CEO as stated in the company's Charter and statutory powers enumerated in relevant Ukrainian laws.

Source: (OECD, 2019^[1]) and Oschad Bank website.

At its initial mandate, the government had announced ambitious plans to pursue corporate governance reform and privatisation of state-owned enterprises as a key reform priority. On 30 August 2019, the former Prime Minister announced plans to establish a holding company that would exercise ownership rights of a large proportion of the state-owned portfolio not slated for privatisation, although, Ukrenergo will fall out of such arrangements to meet independence requirements set out for transmission system operators according to the European Energy Community Secretariat *acquis*. This was further confirmed in the previous Government's Five-Year Programme, which cites the creation of a "National Wealth Fund" under which most strategic³ state-owned companies will be transferred. Currently, the SOE portfolio consists of roughly 3700 centrally-owned SOEs spread across 85 ownership entities. According to a concept note

² Following the disqualification of some of the board members, the World Bank issued a statement (on Facebook), in which it underlined the importance of the NBU to carry out its legislative requirements according to Article 7 of the Law on Banks and Banking and to ensure that supervisory board members are selected according to "strict standards of independence and non-conflict of interest."

³ According to media sources, in January 2020, the Government approved and recently submitted to the Parliament, a list of "strategic" SOEs, which will not be candidates for (full) privatisation. Ukrenergo is among the list of companies to remain 100% state-owned (Ukrinform, 2020^[66]).

shared by the Ministry for Development of Economy, Trade and Agriculture (MDETA), the size of the portfolio to be transferred to the National Wealth Fund will be reduced to 69 SOEs thanks to a rapid privatisation programme of approximately 1000 enterprises, the liquidation of approximately 2000 more and through the consolidation of over 300 entities in the forestry sector (Box 1.3). The entities that will remain under state ownership are justified according to (1) national security reasons, (2) public policy objectives or to correct market failures; and (3) retain control of natural monopolies or strategic resources.

The former Government's Five-Year Plan further notes the resumption of an ambitious privatisation programme to be led by the State Property Fund, which would include SOEs operating in the energy sector (such as Centrenergo). These plans are to be complemented with additional reforms in the energy sector that would break up monopolies and move towards market consistent pricing of electricity. These plans would represent a positive development that, if effectively implemented, would address some of the key ownership and governance challenges identified in this and earlier OECD reviews (see (OECD, 2019^[1])). It remains to be seen if the new government formed in March 2020 will continue with the same reform programme, despite the mounting economic pressures and need for structural reforms related Covid-19 induced economic crisis.

Box 1.3. National Wealth Fund

According to plans shared by the MDETA, the National Wealth Fund (NWF) will be responsible for a portfolio of 69 state-owned enterprises operating across a wide range of sectors. The Fund should be established at arm's length from policy making with a board of directors including independent directors. The corporate governance arrangements of the fund are still under discussion, including the extent to which the state can still exercise "political control", however, at the time of writing, the preferred option was for a majority of the board seats of the Fund to be appointed by the Cabinet of Ministers. To counterbalance the political control of the NWF, the proposal would retain a majority of board seats of SOEs falling under the Fund's control to be filled with independent directors. For the nomination of directors in SOEs, the Nomination Committee led by the MDETA (which includes international observers) will be retained, but would also include representatives of the NWF. For SOEs without boards of directors, the NWF would exercise the right to appoint the CEOs based on a competitive recruitment process.

The current plans for the NWF have not yet elaborated a number of key areas of importance, including:

- The legal form of the Fund;
- Transparency and disclosure requirements applicable to the Fund;
- Accountability mechanisms of the Fund towards relevant representative bodies;
- Mechanisms for distribution of dividends paid by SOEs;
- Mechanisms for interaction with the rest of the government on the overall ownership policy, sectorial priorities and corporate objectives; and
- Capacity, funding and operational aspects of the Fund, among other areas.

Source: (MDETA, 2019^[2])

The former government had also announced plans to upgrade the legal and regulatory framework applicable to state-owned enterprises, which remains fragmented and inconsistent with the Company Law. Under the previous Parliament, a draft Law 6428 "On amendments to certain legislative acts of Ukraine on improvement of corporate governance of the legal entities whose shareholder (founder, participant) is the state" (hereinafter referred to as the "draft Law 6428") was introduced in 2019, though it never passed.

Many observers in the international and corporate governance community considered it to be an important step in demonstrating the willingness of the government to clarify inconsistencies with regard to existing laws, as well as to upgrade corporate governance practices in SOEs, notably through the empowerment of supervisory boards. The draft law, *inter alia*, would grant Supervisory Boards the rights to approve the strategic development plans, significant transactions (e.g., asset management agreements, joint-venture agreements, etc.), appoint the CEO and Management Board members provided that the authority of the Supervisory Board is reflected in the SOE's charter. At the time of writing, the MDETA had confirmed that the government had intentions to pursue legislative changes moving in the same direction as the draft Law 6428, though no legislative proposals were shared with the assessment team. In the meantime, the Cabinet of Ministers approved Protocol Decision No. 26 (of 18 December 2019) establishing minimum criteria for the Charters (and related company regulations) of some of Ukraine's largest SOEs, which would aim to bring corporate governance practices further in line with the OECD SOE Guidelines (MEDT, n.d.^[3]). In particular, the decision applies to Ukraine's top-10 SOEs (in terms of size, revenue, assets and employees) representing approximately 80% of total state-owned assets⁴ and identifies several key areas for improvement in the course of 2020, including the appointment of board members, which are subject to a competitive selection procedure; the establishment of key company performance indicators; as well as the establishment of specific provisions granting the Supervisory Board the power to appoint and dismiss the management boards of SOEs⁵, and also approve strategic documents, amongst other aspects.

As documented by various OECD reports, more broadly, there are concerns about the adequacy of existing competition enforcement, and the ability of anti-corruption authorities to tackle vested interests and corruption schemes involving SOEs – which would be an important element of any well-founded reform of SOEs operating in the energy sector ((OECD, 2016^[4]); (OECD, 2018^[5]); (OECD, 2019^[6])).

The energy sector is a focus area for reforms given the importance of energy security and independence to the country's future. However, it is complicated by the fact that the electricity sector is oligopolistic, dominated on the one hand by a number of large and often inefficient SOEs, and on the other by large private producers with ownership traced back to a small number of influential individuals involved in the full spectrum of the energy value chain ((OECD, 2019^[6]); (Low Carbon Ukraine, 2019^[7])). Together with heavy government regulation, as well as mismanagement of SOEs and the presence of vested interests, these factors have contributed to undermining the stability and security of Ukraine's energy sector. To complicate matters, Ukraine has one of Europe's highest levels of energy inefficiency (OECD, 2019^[8]). The electricity sector is no exception but recent reforms have aimed to address some of these challenges. In 2017, the Government enacted the Electricity Market Law, which aims to liberalise the energy market in line with the EU Third Energy Package, and foresees the creation of a single European electricity market. Relevant dispositions include:

- Introduction of competition in the wholesale and retail electricity markets;
- Balancing of the electricity market and (currently embryonic) ancillary services to ensure sufficient electric energy volumes (i.e. to balance supply and demand);
- Work towards integrating into the European energy market (through both import and export); and
- Separation of natural monopoly activities in transmission and distribution from competitive activities at other levels of the supply and distribution chain (i.e. production, supply and trader activities).

⁴ Top-10 companies include Naftogaz, Ukrzaliznytsia, DPZKU, Ukrhydroenergo, Ukrenergo, Ukroboronprom, Ukrposhta, Energoatom, Ports of Ukraine, and Boryspil International Airport.

⁵ Note that the assessment team was informed that some exceptions may apply.

Despite these achievements, both on the SOE reform front and in the area of electricity market reforms, many challenges remain ahead to see through full implementation.

The launch of the wholesale electricity market in July 2019 has been a welcome development, but it has not come without its challenges. Observers posit that the launch was rushed and has not yielded the kind of competition and market dynamics that some had envisaged (Low Carbon Ukraine, 2019^[7]).⁶ The Government of Ukraine still needs to determine a mechanism for settling debts on the electricity market, relating to problems with historical debts and unpaid bills that now bring into question the operation of the supplier of last resort, Ukrinterenergo (Energy Community Secretariat, 2019^[9]). Moreover, electricity tariffs for transmission (unregulated segment) have been challenged in court after they rose considerably following the market launch. The tariff for transmission is aimed to cover costs incurred by Ukrenergo to compensate the Guaranteed Buyer for the difference between the cost of electricity purchased by it at the green tariff price (which is high to incentivise renewable energy production) and its price on the day-ahead electricity market, and costs associated with the settlement of the electricity imbalance of the balancing group of the green tariff producers (Energy Community Secretariat, 2019^[9]). It has been documented by Ukrenergo that in 2019 alone, the amount of deficit it has accumulated is estimated to be around 2.5 billion Ukrainian Hryvnias (UAH).

Along with numerous changes to the tariff, issues have been raised regarding the compensation of entities, including Ukrenergo and the Guaranteed Buyer. Additionally, the disproportionate public service obligations imposed on the main state-owned generation companies is unsustainable, and according to the Energy Community Secretariat “fails to respect the proportionality requirements and foreclosing the wholesale market instead of introducing competition” (Energy Community Secretariat, 2019^[9]). Finally, corruption has remained a significant challenge in electricity market, resulting in the losses of billions of hryvnias within the sector (OECD, 2019^[11]).

The appointment of a new government provides an opportunity for the country to ensure sustainability of its corporate governance and energy sector reforms. This Review is conducted in this context and aims to support the Government of Ukraine in its efforts to reform corporate governance in the energy sector. It intends to cover the current ownership and governance framework in the Ukrainian electricity sector (Section 1), including recent changes brought by the launch of the new wholesale electricity market as well as corporate governance practices in the sector, covering Ukrenergo, the transmission system operator, as a case study (Section 2).

The focus on Ukrenergo is timely as the company is at the centre of reforms aiming to liberalise the electricity market in Ukraine and in parallel has been undergoing corporate governance reforms over the last year. This includes transforming the company from a unitary enterprise into a joint stock company – a process that was finalised in July 2019. The company has had an independent supervisory board in place since October 2018, and is undergoing additional governance reforms, including ramping up its system of internal controls and internal audit, in view of upgrading corporate governance practices.

⁶ The Energy Community Secretariat noted that the single buyer market model that should have been replaced by a competitive electricity market structure, allowing market participants to buy and sell electricity on the bilateral, day-ahead and intra-day markets and to offer capacities and electricity for balancing and ancillary services, is still in place in practice with little electricity of the incumbent generators being sold on the free market. In fact, 53% of generated electricity was being traded on the open market in the first two months (Energy Community Secretariat, 2019^[9]).

2. The electricity market in Ukraine

2.1. The electricity market reform

Ever since independence, Ukraine has sought to reform its electricity sector.⁷ As early as 1996, the government began working towards the creation of a wholesale electricity market, which would involve the unbundling of electricity generation, transmission and distribution activities. However, it retained SOEs in the sector, set up a “single-buyer” model, and regulated tariffs within the industry [Box 2.1]. State-owned enterprises in the sector were subjected to soft budget constraints, and competition was weak. In combination with fossil-fuel subsidies for electricity generation, cross-subsidies in the electricity market and weak payment discipline, this resulted in limited incentives for energy efficiency or new investment, as well as a significant burden on public finances, particularly for local budgets, entailing either public subsidies or forgone revenues from dividends. Below-cost pricing, weak payment discipline on the part of consumers and other inefficiencies led to quasi-fiscal deficits (OECD, 2007^[10]). Thus, Ukraine has continued to experience inefficiencies in electricity production and distribution, with annual losses surpassing an estimated 10% of GDP ((OECD, 2019^[11]); (IEA, 2018^[12])).

The situation was complicated by the partial privatisation of regional power companies - commonly known as *oblenergos* – before the restructuring process was complete. While probably desirable in the long run, privatisation proved highly problematic in the absence of any clear plans for further restructuring the energy sector, for several reasons (OECD, 2019^[6]). First, any further restructuring was complicated by the need to respect the new owners’ property rights. Secondly, the partial privatisation in some segments of the industry created both opportunities to exploit market imperfections and other opportunities arising from the partially reformed nature of the sector. Thirdly, the new owners had a strong interest in shaping further reform of the sector. Moreover, some of the unbundled assets were subsequently “re-bundled” into a large state-owned holding company, and by the mid-2000s, the wholesale power market was so heavily regulated and so distorted by cross-subsidy mechanisms that it was not considered to be operating as a market (IEA, 2006^[13]).

Despite these challenges and barriers, reform has continued, albeit at an uneven pace. In 2011, Ukraine acceded to the European Energy Community, which was followed in 2013 with the passage of a law to liberalise the wholesale electricity market in compliance with European requirements.⁸ However, the suggested legal framework was reportedly not in line with the Third Energy Package and, as a result, necessitated further improvement (CMS Law, 2017^[14]).

Following the change in government in 2014, which was precipitated by the Euromaidan movement, the country signed an Association Agreement with the European Union. The Agreement required, among other

⁷ It should be noted that reforms were impacted by the severe recession of the 1990s, which followed the dissolution of the USSR. Ukraine’s electricity supply fell by 36% between 1991 and 1999 as the economy contracted (IEA, 2018).

⁸ This has entailed the establishment of bilateral, retail, and ancillary services markets, along with day-advance trading (Verkhovna Rada, 663-VII, 2013).

aspects, a reduction of Ukraine's energy intensity levels (keeping in mind that Ukraine is the least energy efficient country in Europe) and the promotion of market-oriented reforms. The agreement was made in the midst of an energy crisis that was set off due to political and economic turmoil, particularly Russia's occupation of Crimea and conflict in the Donbass. After some time, the conflict led to supply chain disruptions within the energy sector, as a significant share of coal production was located around the regions of Donetsk and Luhansk (OECD, 2018^[16]). With an economic and energy blockade imposed on the region in 2017-2018, the Ukrainian electricity market operated in a state of emergency as it reduced reserves of power generating capacity (OECD, 2019^[6]).

Box 2.1. Wholesale electricity market in Ukraine prior to reform

Ukraine's wholesale electricity market was launched in the 1990s. While separating electricity production, transmission and distribution, the market continued to be heavily regulated, with state-owned enterprises acting as the main market players. Based on the English and Welsh power pool models, Energorynok ("power market") was created in 2000 as a single buyer to settle payments among market players within the industry based on tariffs set by the National Electricity Regulatory Commission - NERC (which later became the National Energy and Utilities Regulatory Commission - NEURC). Energorynok would buy electricity at regulated prices from producers, such as Energoatom and Ukrhydroenergo, which would be transmitted through Ukrenergo towards *oblenergogs* (regional supply and distribution networks set up at the regional level) for distribution. *Oblenergogs* would also be responsible for buying electricity from Energorynok, and selling it to consumers (both regulated and non-regulated), who would pay retail prices based on tariffs set according to wholesale, transmission and distribution costs (IEA, 2006^[13]).

As part of promoting efficiency within the retail market, the *oblenergo* privatisation process began in the late 1990s. Most of the *oblenergogs* have been privatised, either fully or partially, though the state continues to hold shares of eight of them through the State Property Fund of Ukraine. Along with *oblenergogs*, private suppliers emerged on the market selling electricity to consumers at non-regulated tariffs. However, the privatised *oblenergogs* and suppliers have remained controlled through ultimate beneficial ownership by a handful of well-known influential individuals.

It should be noted that while *oblenergogs* were responsible for buying and distributing electricity in the wholesale market, large industrial consumers could purchase electricity from unregulated electricity suppliers.

Note: Small electricity producers that were connected to the distribution grids could sell electricity directly to *oblenergogs* without selling it to Energorynok, though these instances were considered rare.

Source: (OECD, 2019^[6])

In 2017, the country introduced a new Law on Electricity Markets, which sought to comply with the EU's Third Energy Package and to integrate Ukrenergo (as the transmission system operator) into the European Network of Transmission System Operators for Electricity (ENTSO-E). The main elements of the law include [for more details see Box 2.2 and Figure 2.1]:

- Replacing the single-buyer model with more competitive elements in the wholesale market, including the establishment of bilateral contracts between market participants⁹, along with day-ahead, intra-day markets and balancing market, and creating an ancillary services market;¹⁰
- Adopting a market-based pricing and retail market that meets consumers' needs, including through the introduction of non-discriminatory tariff setting, and free supplier choice;
- Ensuring the separation of generation/supply from transmission and distribution activities to avoid conflicts of interest (unbundling);
- Further reinforcing the independence of the regulatory authority and adding monitoring of tariffs to its role;
- Reinforcing the independence of the transmission system operator (Ukrenergo) to meet EU requirements, and;
- Adopting common rules for domestic electricity market, cross-border flows, and measures on security of electricity supply and investment in infrastructure.

This law was also intended to be complimentary with the Energy Strategy of Ukraine until 2035 [Box 2.3], under which the government has set goals to raise efficiency within the energy sector, including its electricity market.

In order to better understand the role of Ukrenergo in the electricity value chain, as well as the implications of the launch of the wholesale market, the following section will provide an overview of the structure and ownership of the electricity sector.

Box 2.2. The 2017 Law on the Electricity Market

On April 13, 2017, Ukraine adopted a new Law on the Electricity Market that sets forth legal and organisational principles regarding production, transmission and distribution, along with purchase, sale and supply of electricity. The new electricity market law seeks to ensure Ukraine's energy security, as well as the safety of electricity supply and the protection of consumer rights and interests. While promoting energy efficiency, minimising costs and developing market interests, it seeks to introduce non-discriminatory tariff setting, free supplier choice, independent regulation and transparency. The main elements of the law include the establishment of bilateral contracts between parties, along with day-ahead and intra-day markets (administrated by the Market Operator), balancing and ancillary services markets (administrated by Ukrenergo as the transmission system operator), and a retail market that meets the needs of electricity consumers.

Some key aspects of the Law are as follows (for note, implementation is still underway):

- **Setting up the Market Operator and the Guaranteed Buyer.** With the elimination of Energoynok, Ukraine set up a Market Operator and Guaranteed Buyer for the new electricity

⁹ Bilateral contracting plays a large role in all wholesale power markets due to the high volatility of spot prices. Some contracts impose physical requirements but most are essentially financial hedges against spot prices, as for example in a "contract for differences" (CFD) in which the seller and buyer insure each other against deviations of the spot price from the strike price specified in the contract (Sioshansi, 2008^[67]).

¹⁰ Ancillary services refer to a variety of operations beyond generation and transmission that are required to maintain grid stability and security. They typically include active power balancing (frequency control and stability), voltage control, transmission system security and black start capability (Kuzle and Sabolić, 2011^[65])

market. Initially, both companies were branches of Energorynok, but they have been registered as independent entities since June 2019.

- **Unbundling *oblenerg*os into electricity supply and distribution system operators (DSOs).** Regional power competencies of *oblenerg*os have been unbundled into DSOs and suppliers. Distributions System Operators are responsible for dispatching electricity to end-users, while suppliers buy electricity from producers and sell it to end-users.
- **Certifying Ukrenerg**o as a transmission system operator (TSO). A prerequisite to its certification has been to ensure that ownership of transmission, generation and supply are separated, and to ensure its independence through corporatisation. Under the new market, Ukrenerg
o is also responsible for operating balancing and ancillary service markets, and serving as a commercial metering and settlements administrator. Ukrenergo applied for certification on 14 August 2019. A preliminary certification decision was approved by the regulator, NEURC, on 7 October 2019. It has since been renewed and final certification is anticipated for 2020 according to Ukrenergo management and the Government, subject to the passage of new legislation which would establish the TSO under the “independent system operator” (ISO) model (as required by the European Community Secretariat and confirmed in their recent opinion issued in January 2020).¹¹

Source: (OECD, 2019^[6])

Box 2.3. The Energy Strategy of Ukraine until 2035

On 18 August 2017, the Cabinet of Ministers of Ukraine adopted Ordinance No.605-p “on the Approval of the Energy Strategy of Ukraine (ESU) for the period until 2035” which sets out the state’s main strategic goals in the energy sector.

The ESU is a program document that outlines the whole range of energy reforms in Ukraine, from energy efficiency to effective resource management.

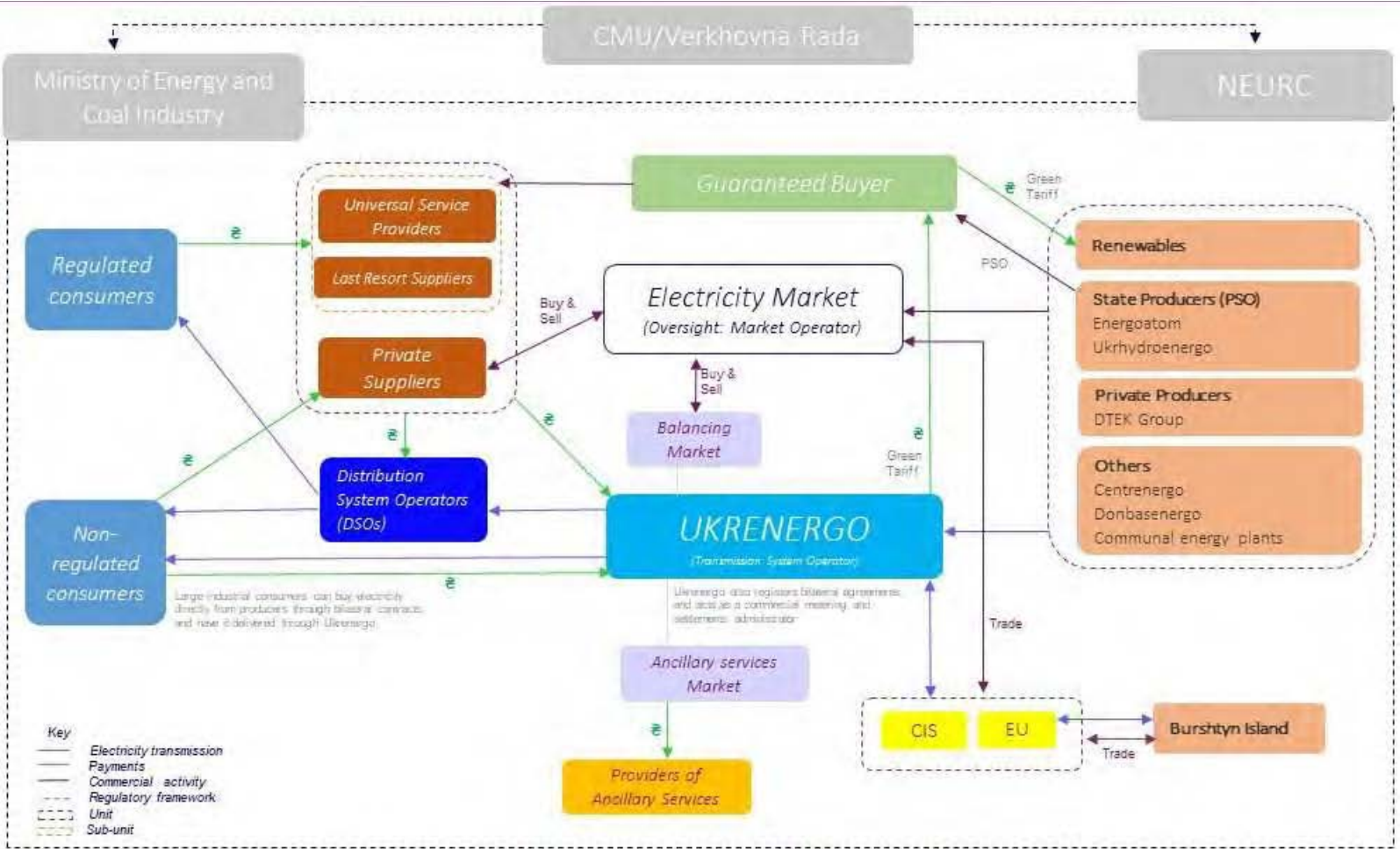
It is divided into three phases seeking to achieve energy sector reform by 2020; infrastructural development and optimisation by 2025; and sustainable development in the long term. Within each phase, the ESU lists key targets and objectives based on energy sub-sectors.

With this strategy, the Ukrainian government aims at halving the energy consumption of the Ukrainian economy, increase the share of alternative sources in the total energy mix of Ukraine up to 25%, and improve the quality and efficiency of energy supply to consumers, amongst other aspects.

¹¹ The assessment team is not aware of the impact that the changes of the status of the energy regulator from an independent body to an executive authority will have on the certification of the TSO. Moreover, certification is dependent on the passage of new legislation that would establish an ISO model – similar to what was done in the case of the gas transmission system operator – to ensure compliance with the requirements of the Third Energy Package and to resolve the *impasse* concerning the ownership rights of the transmission system, which under Ukrainian law, must remain under state ownership. The ISO model would presumably grant Ukrenerg

o the title for usage of the transmission assets for a pre-defined period for the purpose of transmission system operation (Energy Community Secretariat, 2020^[68]).

Figure 2.1. Structure of the new electricity market



Source: (OECD, 2019[6])

3. Ownership and governance in the Ukrainian electricity sector

As mentioned, economic activities in the energy sector are highly concentrated. They involve a number of large SOEs [Figure 3.1] and a handful of private actors operating across the value chain. In the electricity sector, the exercise of ownership rights on behalf of the state falls under the following entities:

- The Ministry of Energy and Environmental Protection - MEEP (a merger of the previous Ministry of Energy and Coal Industry – MECI and the Ministry of Ecology and Natural Resources - MENR¹²) and the State Property Fund (SPF) as the main owners of SOEs involved in electricity generation and production;
- The Ministry of Finance, which recently became the shareholder of Ukrenergo (in view of separation of transmission activities from generation and supply);
- The State Property Fund as owner in the supply and distribution segment; and
- The Cabinet of Ministers as owner of the newly established entities for the recently launched wholesale market.

Figure 3.1. Ownership arrangements in the electricity sector



Source: (OECD, 2019_[6])

¹² Note that CMU Resolution 425 of 27 May 2020 renames MEEP to Ministry of Energy.

The remainder of this section will provide a detailed breakdown of structure and ownership in the electricity sector, from generation to transmission, supply and distribution as well as entities established as part of the newly launched wholesale market.

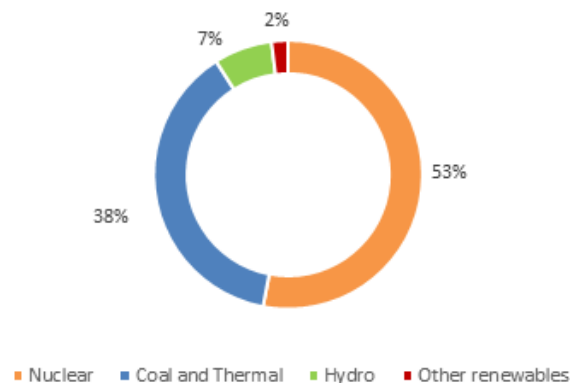
3.1. Ownership in the electricity sector in Ukraine

Electricity generation

In 2018, Ukraine generated 159,3 billion kilowatt hour (kWh) of electricity [see Figure 3.2]. Approximately half of the electricity is generated by nuclear plants, while a third is generated using coal. Other sources used in electricity production include hydro, natural gas and oil. In recent years, Ukraine has also sought to introduce renewable sources, beyond hydropower, into its energy mix. While renewables (including wind, solar and biofuels) have been introduced, they continued to make up less than 2% of total electricity production, though their share is estimated to have risen to over 4% as of April 2019 (Energoynok, 2019^[17]) thanks to the introduction of feed-in tariffs for electricity produced from alternative energy sources to incentivise renewable energy production.¹³ Ukraine's residential consumers are the main end-users in total final consumption, with industrial and transport sectors, among others (including public services, agriculture and non-energy use) following suit.

Although subject to competition following the launch of the wholesale electricity market, the number of players active in electricity generation remains limited. State-owned enterprises account for over three quarters of production. Energoatom, a state-owned enterprise under the management of the MEEP, currently operates four nuclear plants that consist of fifteen units, generating approximately 53% of electricity in the country. Ukraine generates a further 7-10% of its electricity through hydro plants owned by Ukrhydroenergo (owned by the MEEP), and roughly 8% through coal and thermal plants owned by Centrenergo (owned by SPF).

Figure 3.2. Electricity generation in Ukraine in 2018, in percentage



Source: (Ministry of Energy, 2019^[18]).¹⁴

¹³ It should be noted that Ukraine has international commitments towards the European Energy Community, as per the Treaty, to achieve 11 percent of energy production from renewable sources in total final consumption by 2020. The incentives plans are based on the National Renewable Energy Action Plan through 2020 (approved in 2014) as well as recent laws, including the Electricity Market Law, which has provisions on long-term agreements for the purchase of electricity produced at the feed-in tariff through 2030.

¹⁴ Note that among thermal energy producers there are 14 large-scale TPPs in Ukraine; six of which work on anthracite coal and others on gas coal. The SPF also has direct ownership over four TPPs (Dniprovsk, Odessa,

The privately owned DTEK Group produces 23% of electricity through its coal and thermal units (OECD, 2019^[6]).¹⁵ DTEK, which is owned by a well-known Ukrainian businessperson, is Ukraine's largest vertically integrated holding company involved in production, supply and distribution of energy, including coal, natural gas, and thermal power. The company is also increasingly active in the renewables sector, especially in wind and solar energy. The main actors involved in electricity generation are summarised in Table 3.1.

Table 3.1. Ownership of electricity generation in Ukraine by Producers

Company	Estimated share of electricity production	Function	Ownership
Energoatom (Nuclear)	53-55%	<ul style="list-style-type: none"> Operates four nuclear power plants that consist of fifteen units, generating over half of the country's electricity; Involved in electricity production, extension of current and new generating capacities, procurement and export of nuclear fuel, etc. 	State-owned (Ministry of Energy)
DTEK Group (Coal, Thermal, Renewable)	23 %	<ul style="list-style-type: none"> Founded in 2005, DTEK Group is Ukraine's largest vertically integrated holding company involved in production, supply and distribution of energy, including coal and natural gas, renewables, thermal power and electricity. Generates 23% of electricity through its coal and thermal power plants. One of the major shareholders/owners of oblenergos (which have unbundled into supply and distribution companies). TPPs, constituting the second major type of electric power generation after nuclear power plants. Power generation from coal and gas is managed by five generation utilities - three of which are owned by DTEK. 	Private (System Capital Management)
Ukrhydroenergo (Hydropower)	7 %	<ul style="list-style-type: none"> State-owned hydropower company operating 9 plants located across Dniester and Dnipro rivers, generating 7-10% of electricity. Company continues to implement the Hydropower Development Programme until 2026, approved by the Cabinet of Ministers. 	State-owned (Ministry of Energy)
Centrenergo (Coal and Thermal)	4-8 %	<ul style="list-style-type: none"> Produces thermal energy and supplies electricity to the wholesale market (according to questionnaire responses, it generates 4% of electricity, though the company's website states it generates 8% of electricity). Supplies power to Kyiv, Kharkiv and Donetsk regions; operates 23 units, including 18 coal-fired power units and 5 oil and gas units. Operates three thermal power plants 	Partly state-owned (State Property Fund of Ukraine owns 78.3% of the shares, with other legal entities owning 20.4% and individuals 1.3%) While earmarked for privatisation, the plans have been postponed
Donbassenergo (Coal)	Less than 2 %	<ul style="list-style-type: none"> Generates less than 2% of electricity. Ukraine's fifth largest operator of coal-fired thermal power plants. Operates two thermal power plants. 	Partly state-owned (Energoinvest Holding owned over 60%. However, current ownership structure is unclear due to location in conflict zone.)
Renewable Energy Producers	More than 2%	<ul style="list-style-type: none"> Approximately 300+ actors present in the market. Less than 2% of electricity, although figures have increased since April 2019. 	Private ownership, significant portion of which belong to DTEK.

Source: (OECD, 2019^[6])

Severodonetsk and Kherson). Centrenergo and Donbassenergo have five plants in total, with the remainder being owned by DTEK group.

¹⁵ As of 2018, DTEK owned 100% shares of twelve coal mining and power generation plants, while holding a majority share in eleven more. Over the years, it has bought up shares of *oblenergos*, including Kyivenergo, Dniprooblenergo and Donetskoblenergo, which have been unbundled into electricity suppliers and distributors ((DTEK, 2019^[70]); DTEK (DTEK, 2018^[71])).

It is worth noting that a number of primary inputs, their processing/refining and transformation to electricity generation are sourced from state-owned enterprises involved in the production of fossil fuels, coal, and uranium (Table 3.2). As noted, a handful of private players present in the electricity generation business, including the DTEK Group and other actors with ultimate beneficial ownership linked to well-known influential individuals, are also involved in the production of coal and renewable energy, which feed into the electricity system.

Table 3.2. Ultimate beneficial ownership in primary energy supply for electricity generation

Ultimate beneficial ownership of primary energy supply for electricity generation can be traced back primarily to the Government of Ukraine and DTEK Group.

Primary input	Government of Ukraine	Private
Coal (to coal power plants)*	National Coal Company	DTEK and other firms with the same ultimate beneficial ownership
Uranium (to nuclear power plants)	Eastern Mining and Processing Plant	Nuclear Energy Systems of Ukraine
Fossil fuels (to thermal power plants)	Naftogaz and its subsidiaries	DTEK oil and gas
Renewables (and clean energy)	Ukrhydroenergo	DTEK Renewables and 300+ other firms

Note: This table does not cover the main actors involved in processing/refining/enrichment nor in the wholesale markets for primary energy.

* A significant portion of coal mines is located in the disputed Donetsk and Luhansk regions. As a result, it became necessary to import coal. It should be noted that the import of coal under the so-called Rotterdam+ coal pricing formula has been recently subject to corruption investigations.

Source: (OECD, 2019^[6])

Electricity transmission

Ukraine's integrated power system and transmission network is operated by Ukrenergo, a state-owned monopoly. Electricity is transmitted through trunk grids from generating plants towards distributors. Ukraine's trunk power grids transmit over 110 billion kWh of electricity each year. It currently has eight regional power systems covering Ukraine, operates equipment at high voltage and manages over 21,300 kilometres of trunk and cross-border high voltage transmission lines. These transmission system assets are state-owned and managed on behalf of the state by Ukrenergo, which remains purposefully organised as a monopoly within the reformed electricity market. The company exercises a degree of control over Ukraine's unified energy system, transmits electricity, and maintains and develops the transmission system. With the launch of the new market, its functions will include (1) transmitting and dispatching; (2) operating the balancing market; (3) operating the ancillary services market (for which no services were procured during July - October 2019 due to no qualified ancillary service providers being registered by Ukrenergo); (4) registering bilateral agreements, and (5) acting as settlements and commercial metering administrator.¹⁶

As mentioned, Ukrenergo has undergone significant changes to comply with the EU's Third Energy Package and to integrate into the ENTSO-E. As part of this process, Ukrenergo was transferred in 2018

¹⁶ In the new market, Ukrenergo will play an important role influencing the cost and reliability of the balancing and ancillary services markets.

from ownership under then Ministry of Energy (MECI) to the Ministry of Finance to ensure so-called “ownership unbundling” of electricity transmission from generation activities.¹⁷

Along with domestic operations, the company coordinates transmission system operations with neighbouring countries (as Ukraine exports electricity to four EU countries). Part of this electricity is generated in the so-called “Burshtyn Island” which, unlike the remainder of the Ukrainian power system, is directly synchronised with continental Europe (ENTSO-E). The power plants that export electricity from this location are operated by the DTEK Group. The remainder of Ukraine’s electricity system is integrated with Russia, Belarus and Moldova, with the cross-border flows managed by Ukrenergo.¹⁸ Following the market launch, it is now possible to import electricity via the Burshtyn Island and other existing integration platforms (Ukrenergo, 2018^[19]). Ukrenergo has plans to fully synchronise the rest of the Ukrainian power grid with the European one – although the Government and company have different views on how this will be done (Ukrenergo, 2019^[20]). Further integration of the Ukrainian power system with the ENTSO-E is important to increase reliability, but also to spur competition in the Ukrainian internal market, however, as discussed below, numerous challenges remain ahead of its potential integration.

Electricity supply and distribution

Regional electricity supply and distribution companies, known as *oblenergys*, were established in 1995 to supply (sell) and distribute (transmit) electricity to consumers in Ukraine. Initially, there were 27 *oblenergys*, of which 24 were allocated to serve each Ukrainian *oblast* (region), with separate ones for Kyiv, Sevastopol and Crimea.¹⁹ *Oblenergys* were responsible for both supplying and distributing electricity at regulated tariffs only within the territory of their licensed activity (that is, they did not engage in activities across *oblasts*). However, as tariffs were fixed for consumers (with households buying electricity at below cost-recovery levels), *oblenergys* began incurring losses, which were partially compensated through a system of subsidy certificates ((NEURC, 2018^[21]);(OECD, 2018^[22])).

Because of their poor performance, most *oblenergys* were subsequently fully or partially privatised. The state continues to hold shares of eight *oblenergys* through the SPF (NEURC Questionnaire, 2019). Along with state-owned *oblenergys*, private suppliers sell electricity to consumers at non-regulated tariffs. However, the privatised *oblenergys* and suppliers have remained beneficially owned by a handful of well-known businesspersons, as well as foreign entities.

As part of recent efforts to promote competition in the retail market, the Law on the Electricity Market has required unbundling of the *oblenergys*, with commercial activities (electricity supply, or sale) separated from monopoly activities (electricity distribution). Distribution System Operators (DSOs) are responsible for dispatching electricity to end-users, while suppliers buy electricity from producers and sell it to end-users. There are three different types of functions which can be exercised by suppliers to meet consumer needs: private supply, universal service supply, and supply of last resort (universal service providers and the suppliers of last resort serve approximately 44% of the consumers) [the ownership of these entities is covered in Table 3.3].

¹⁷ Note that at the time of writing, the government was considering transferring ownership of Ukrenergo from the Ministry of Finance to another Ministry, however this was not confirmed.

¹⁸ It should be noted that on 27 August 2019, Ukrenergo filed a lawsuit with Russia over assets lost in Crimea following Russia’s military occupation.

¹⁹ Following the occupation of Crimea, Ukraine lost the Sevastopol and Crimea *oblenergys*, while additional distribution system operators were introduced, bringing the number to 32.

Table 3.3. Ownership of electricity supply and distribution in Ukraine

In preparation for the wholesale market launch the electricity supply and distribution companies - the so-called *oblenergos*, which previously operated as integrated entities - are in the process of being unbundled, separating distribution from supply. However, their beneficial ownership remains largely the same.

Type of function	Function	Ownership
Private suppliers	Suppliers buy electricity from producers and sell it to end-users freely, based on prices agreed between the electricity producers and suppliers.	500+ entities licensed (as of July 2019); public and private ownership, including foreign-owned entities, with beneficial ownership belonging to 5-7 individuals
Universal service providers	Sell electricity only to residential and small non-residential consumers at regulated rates (the fixed price will remain at the level of the second quarter of 2019). <i>Oblenergos</i> will fulfil the functions of universal service providers within the territory <i>where</i> license has been issued until 2021 after which the licence conditions will be the same as for other suppliers. Only one such provider may operate in a given region.**	25 entities (as of July 2019) 8 of which are fully state-owned and 6 majority state-owned.
Ukrinterenergo – supplier of last resort	The supplier of last resort provides services to consumers due to reasons such as the cancellation of their supplier services or the failure to select a supplier. It may supply electricity for no more than 90 days at regulated tariffs.	100% state-owned (Ministry of Energy)
Distribution System Operators (DSOs)	DSOs are responsible for dispatching electricity to end-users, while suppliers buy electricity from producers and sell it to end-users.	32 DSOs in operation (as of July 2019) The State Property Fund is shareholder in 8 entities: 1. Zaporizhiaoblenergo, 60% 2. Odesaoblenergo, 25% 3. Kharkivoblenergo, 65% 4. Cherkasyoblenergo 46% + 25%* 5. Mykolayivoblenergo, 70% 6. Khmel'nitskoblenergo, 70% 7. Sumyoblenergo Public JSC, 25%; 8. Ternopiloblenergo JSC, 51%

Note: *Note that the SPF reports that the Ukrainian Energy Saving Service Company, which is 99% state-owned, retains 25% of share capital in Cherkasyoblenergo.

** As of 2021, the territory of Universal Service Providers will be defined in the conditions of corresponding tender for designated new universal service providers (see article 63 of the Law).

Source: (OECD, 2019^[6])

Other electricity market players

In view of the launch of the wholesale electricity market, Ukraine has set up two new SOEs: the Market Operator and Guaranteed Buyer, which will replace Energorynok (Table 3.4), the SOE that was operating as “single buyer” prior to the market launch. The Market Operator is involved in electricity market oversight, such as monitoring the day-ahead and intra-day electricity markets and organising the sale and purchase of electricity. The Guaranteed Buyer is responsible for increasing the share of electricity generation from renewable sources by buying it from entities that are eligible for “green” tariffs. However, it is also worth noting that since the launch of the new market, the Guaranteed Buyer has been involved in buying electricity from producers, including 90% of electricity generated by Energoatom and 35% by Ukrhydroenergo, and selling it at regulated rates primarily to benefit household consumers [see also Box 2.2 above outlining recent changes to the market]. This brings back a system that resembles the “single buyer model” and has a negative impact on state-owned generation (Energy Community Secretariat, 2019^[23]).

Table 3.4. Ownership of entities involved in the wholesale electricity market

Company	Main functions	Ownership
Energorynok (to be liquidated)	<ul style="list-style-type: none"> Previously, main responsibility was to optimise mechanisms of the wholesale electricity market in Ukraine, and improve state of payments of electricity bought and sold on the wholesale market. It also paid for Ukrenergo's operations. It will remain as an entity to collect old debts before its liquidation. 	100% state-owned (Cabinet of Ministers)
Market Operator	<ul style="list-style-type: none"> Electricity market oversight and monitoring of the day-ahead and intra-day electricity markets. Organising the sale and purchase of electricity in the day-ahead and intra-day electricity markets. 	100% state-owned (Cabinet of Ministers)
Guaranteed Buyer	<ul style="list-style-type: none"> Responsible for increasing share of electricity generation from renewable sources. Purchases electricity from entities eligible for "green" tariffs. Purchases electricity from SOE producers for regulated household market. 	100% state-owned (Cabinet of Ministers)

Source: (OECD, 2019^[6])

With a clear understanding of the ownership arrangements and structure of the market following the launch of the new electricity market, the following section will focus on some key challenges and concerns.

3.2. Key challenges related to the electricity market

While it is still early days to judge the success of the launch of a new electricity market in Ukraine, observers have identified a number of challenges in terms of the characteristics of the market, its design and structure. This section is not intended to provide a comprehensive overview but rather a snapshot into the current market dynamics which are important to set the stage for the conclusions and recommendations provided in Part III of this review.

These challenges include, but are not limited to: (i) the risk of abuse of market power due to lack of competition; (ii) heavy and market distorting public service obligations; (iii) unclear solutions towards debt settlement for state-owned enterprises; (iv) adequacy of tariffs; and (v) risk of corruption and rent-seeking behaviour.

Risk of abuse of market power and lack of competition

The Ukrainian market is, for the time being, strongly regulated regarding both the role of different players and prices. As of now, it looks as if the "market" had been transferred from one regulated system organised through a single buyer, to another regulated system organised around different market segments (NEURC, 2019). The heavy regulation is motivated by the objective, from the start of the launch of the wholesale market, to keep the prices for households under control. Part of the concern about prices comes from the fact that there is currently little competition in the electricity markets in Ukraine. On the generation side, at least 60% of generation capacity is with state-owned companies and most of the remainder (with the exception of renewables production) is produced by DTEK²⁰. Downstream, the level of competition is not high with the market concentrated among 5 to 7 individuals.

Thus, to avoid abuse of dominance by certain market players, market power mitigation measures have been used at the outset and in the design of the market. These include price caps in all segments of trading

²⁰ While it is not unusual to have SOEs involved in generation capacity, the average share in OECD countries is just under 40% compared with 75 % in Ukraine.

(including intra-day and day ahead) as well as hefty public service obligations imposed on state-owned enterprises [the latter to be discussed further below].

Based on observations from the first few months of the wholesale market launch (i.e. bilateral agreements, day ahead trading, intra-day trading and imports) at the start of the market these measures are limiting the scope of competition to a minimum, be it in power production, trading at the wholesale market or selling to the end customers. Moreover, according to analysis done by third parties of the prices in various segments in the first two months of the market (bilateral, intra-day, day-ahead), it would appear that prices for electricity continue to converge towards the price caps, and that prices are stable, not volatile (as one would expect in a market with peak/off peak hours).

The recent measures undertaken to promote renewable generation capacity with the entry of new market players is a positive development in the upstream market, but there are still signs that more can be done downstream including introducing more competition in the supply of electricity to consumers. Moreover, the prospect of integration into European energy markets can further support the introduction of enhanced competition.²¹

Public service obligations and market distortions

As alluded to above, to ease the transition to the new market, Ukraine has sought to further lower electricity tariffs for consumers (primarily households) by imposing public service obligations (PSOs) with the burden mainly placed on state-owned players in the market. According to CMU Decree No. 483 of 5 June 2019, the PSO mechanism is a “temporary measure”, which should be terminated by 31 December 2020. Participants with special responsibilities in the electricity sector include the Guaranteed Buyer, Ukrenergo, DSOs and the universal service provider, as well as electricity producers (namely Energoatom and Ukrhydroenergo).

As mentioned, up to 90% of electricity generated by Energoatom and 35% by Ukrhydroenergo will be sold at a fixed rate (e.g. regulated price) to the Guaranteed Buyer through 1 July 2022.²² Neither SOE will be compensated for its PSO obligations. Interviews with the regulator indicate that there is an assumption that cross-subsidies²³ from the remaining “non-regulated” segments might adequately cover costs incurred from the PSO. However, no calculations have been provided to the Secretariat on the foregone earnings for SOEs (and especially Energoatom) made from trading electricity in the wholesale market – especially considering that nuclear energy generation (comprising 53% of electricity generation) is sold at a lower price on the market as compared to other sources (including thermal) of electricity generation (OECD, 2019_[6]). It should be noted that other market players are benefitting from the ability to sell electricity at higher prices in other market segments (e.g. the balancing market where caps are higher). Thus, there is an uneven playing field among market participants. Ultimately, the price caps and PSOs may contribute to long run inefficiencies in the market and may also result in higher electricity costs.

²¹ The announcement on 9 August 2019 that Ukrenergo and the Market Operator would establish a working group for developing amendments to market rules, including market participants, the Ministry of Energy, the regulator and the Antimonopoly Committee is a welcome development.

²² It should be noted that these figures have been subject to repeated adjustments over the course of the last few months. For Energoatom, this figure has fluctuated from 90 to 75 %, and for Ukrhydroenergo this figure has fluctuated from 20 to 50 %. Also in August 2019, the CMU amended the resolution and slightly altered the amount of nuclear power subject to the PSO.

²³ According to the Law on the Electricity Market, cross-subsidies should be eliminated.

Debt settlement for state-owned enterprises from previous market arrangements

One of the main aspects of electricity market reform has been the development of a framework to settle debts for SOEs. The concerns about debt involve a number of state-owned enterprises, including the now defunct Energorynok and Ukrinterenergo (the debts owed by Ukrenergo are addressed under the section 3.2.4 below).

By July 2019, the former “single buyer” Energorynok had accumulated approximately UAH 32 billion in debt. Reasons for indebtedness include heavy market regulation and the presence of vested interests, which prevented *oblenergos* from recovering the costs of electricity they sold and reimbursing Energorynok.²⁴ In turn, Energorynok struggled to settle payments among the market players. Ukraine has sought to design a methodology to settle payments among the market players to ensure market recovery. In collecting and settling old debts, Energorynok will exist as a legal shell company, though a mechanism needs to be adopted through which market participants can collaborate. In 2018, the Cabinet of Ministers submitted a draft law to the *Verkhovna Rada* (the parliament) to address this issue, though it was withdrawn (Verkhovna Rada, 2018^[24]).²⁵ Without a mechanism in place, Energorynok continues to face potential bankruptcy and lawsuits, while current participants may experience challenges in advancing market development. In 2019, the amount owed to Ukrenergo from Energorynok (Energy Market) amounted to UAH 0.6 billion. This is in addition to the previous amounts that have gone uncollected by Ukrenergo and for which it has already filed a lawsuit against Energorynok to collect debts worth up to UAH 1.67 billion.

The issue of debt also concerns the supplier of last resort (Ukrinterenergo) which provides services to consumers due to reasons such as the cancellation of their supplier services or the failure to select a supplier. Within two months after the launch of the market, Ukrinterenergo entered into default status due to non-payments from certain consumers, e.g. water suppliers, which under normal circumstances should be required to pay for electricity at balancing market prices. Because of its insolvent status, Ukrinterenergo is not allowed to obtain the financial guarantees to participate in any segment of the newly launched wholesale market. As noted by the Energy Community Secretariat, the company has historically cumulated debts which have also not been resolved (Energy Community Secretariat, 2019^[9]).

Adequacy of tariffs

Transmission and dispatching tariffs are, for the time being, set by the National Regulator (NEURC) for Ukrenergo and the DSOs for electricity transmission and dispatching, as they perform monopoly activities and are not involved in buying or selling electricity (except for specific cases, including balancing the flow of electricity).²⁶ Ukrenergo is responsible for transmitting electricity to the distribution system operators

²⁴ It should be noted that one potential area to be explored in terms of unsettled debt are categories of companies (state-owned and private) who are guaranteed electricity services (regardless of their debt standing) due to their role in providing critical infrastructure or whose operations – if supply is interrupted – could pose environmental risks or hazard (e.g. chemical plants, utilities, etc.). The assessment team was unable to verify the extent of the debt owed by such entities. The list of companies subject to such conditions is reportedly opaque and could be considered one of the areas vulnerable to corruption.

²⁵ Note that another draft law was recently introduced by the government with regards to the debt settlement issue. It is recently being considered by the Parliament and its committees (Verkhovna Rada, 2019^[72]).

²⁶ As noted in a previous OECD publications (see (OECD, 2019^[6])) in order to ensure these entities invest in their operations and promote the efficiency of their services Ukraine considered adopting a Regulatory Asset based (RAB) tariff. The aim of the RAB approach was to incentivise entities transmitting and distributing electricity to increase the value of their assets through upgrades. While this would enable them to charge higher rates for their services, it would also promote their efficiency ((Interfax, 2018^[73]);(Ukrenergo, 2018^[37])). Although this policy would be beneficial in the

(DSOs), who then send it off to consumers. As discussed in Part II of the report, Ukrenergo's tariff level has been revised multiple times since the launch of the market and been challenged in court by certain industrial consumers refusing to pay higher fees (particularly compared with residential consumers) (see Box 4.1 in Part II). Part of the reason for tariff hikes included the cost for the purchase of grid losses and Ukrenergo's responsibility to offset the cost of the Guaranteed Buyer for the generous "feed-in" tariff established for the purchase of electricity produced from renewable sources (Box 3.1). Ukrenergo estimates that in 2019 alone, the debts for transmission and dispatching services amounted to UAH 1.5 billion (US\$61.65 million), while UAH 0.4 billion (US\$16.44 million) in companies' payments on rates was suspended under court rulings (UNIAN, 2020^[25]).

Box 3.1. Green feed-in tariff

Ukraine plans to increase the share of renewables within its energy mix to 12% by 2025, and to 25% by 2035 ((SAEE Questionnaire, 2019); (Cabinet of Ministers of Ukraine, 2017^[26])). As part of incentivising the development of the renewables sector, Ukraine has established a system of green tariffs to purchase electricity produced from renewable sources and to channel it through the common electricity pool. The green tariff is approved by the NEURC and is based on the variety of alternative sources used, with an added premium for using equipment produced in Ukraine. Green tariffs have been applied to over 300 renewable producers (most of which are solar), and they are expected to remain valid until 2030²⁷. In order to strengthen competition in the renewables sector, Ukraine plans to phase out the green tariff system and replace it with an auction system, with some auctions planned as of 2020.

Under the new market model, the Guaranteed Buyer is responsible for increasing the share of electricity generation from renewable sources by buying from entities eligible for "green" tariffs. The Guaranteed Buyer is to cover the cost of the green tariff through its sale of electricity to supply households through the Public Service Obligation. In practice, this means that the Guaranteed Buyer buys electricity generated through Energoatom and Ukrhydroenergo at a lower rate, and sells it at a slightly higher rate to the households. The difference is supposed to cover the fees for the renewable producers. However, since the household tariffs have remained capped, the Guaranteed Buyer cannot recover the full amount to pay the renewable producers. Ukrenergo is then responsible for compensating the Guaranteed Buyer for what it cannot cover based on the existing scheme. It is presumed that this PSO for Ukrenergo would be cross-subsidised from Ukrenergo's transmission tariffs. However, the court's suspension of Ukrenergo's tariffs as a result of the action by industrial consumers resulted in a UAH 2.4 billion deficit for the company. The Guaranteed Buyer faced challenges in meeting its obligations to green energy producers and investors. The Guaranteed Buyer filed a lawsuit against Ukrenergo and subsequently recovered part of its costs. As far as the assessment team is aware, Ukrenergo still owes over UAH 1 billion to the Guaranteed Buyer and subject to further fluctuations of the transmission tariff, the latter may continue facing challenges in repaying "green" producers (including foreign investors) (Guaranteed Buyer, 2019^[27])

long term, it would have caused high fees and price shocks in the short run. As such, during the transition period, the NEURC has been responsible for setting transmission and dispatch tariffs by factoring in elements, such as operating and material costs, financial and corporate expenses, and the volume of electricity transmitted.

²⁷ It is worth noting that the green tariff and the mechanism for the tariff are currently under consideration for revision in Ukraine.

Risk of corruption or rent seeking behaviour

Corruption continues to pose a significant challenge to market efficiency in the electricity sector. More broadly, corruption challenges in the energy sector reflect Ukraine's institutional context which create particular opportunities for rent seeking behaviour. The complexity of electricity markets means that well-positioned players can extract substantial rents by manipulating, or even securing the alteration of fairly technical aspects of the market rules. A forthcoming OECD Typology of Corruption Schemes in the Energy Sector in Ukraine will document cases of (alleged) corruption in the energy sector many of which involve corruption schemes in procurement processes, through bid rigging and other schemes (Box 3.2). It should be noted that both corruption and procurement will be the focus of forthcoming OECD studies with a focus on the energy sector in Ukraine.

Box 3.2. OECD Typology of Corruption Schemes in the Energy Sector in Ukraine

A forthcoming OECD Typology of Corruption Schemes in the Energy Sector in Ukraine will document cases of (alleged) corruption in the energy sector many of which involve corruption schemes in procurement processes. Some of the typical schemes have the following characteristics (this list is non-exhaustive):

- A system of kickbacks at which the price of goods and services is increased at least several times in order to pay bribes to lobbyists, politically connected individuals, relatives or connections to SOE officials;
- Tenders and purchases of unsolicited or superfluous services and goods (or via intermediaries);
- Schemes for the purchase of equipment, works or services, which were carried out with a significant excess of the planned cost. Suppliers that offer a lower price are simply "thrown out" of the tender on artificial, pre-set formal grounds. The winner's product as a result is "expensive" in every sense of the word and the winner itself is usually a favoured supplier;
- Prior agreement on the price between the bidders or participation of fictive competitors (usually represented by the companies whose beneficial owners are family members/ friends from the circle of political elite or energy companies' leadership).
- Bid rigging the procurement process to ensure the bidder is predetermined, with a large payment made in advance to the selected supplier. The bid winner can be a shell company that immediately transfers the money to an offshore company or one that does not deliver on its contractual obligations; and,
- Outsourcing services previously carried out by the SOE to an external provider, who then bribes the SOEs officials to use the SOEs own resources (equipment and staff) to carry out the outsourced services.

Source: OECD, forthcoming.

3.3. Electricity sector governance and policy framework

The electricity sector governance and regulatory framework in Ukraine includes a vast array of actors with responsibilities ranging from formulating state policy, to oversight and regulation. While efforts have been made to separate these various roles in line with the practices promoted by the OECD Guidelines on Corporate Governance of SOEs, roles and responsibilities still overlap in certain areas related to energy

policy, ownership and regulation. The following section and Table 3.5 provide more details on each of these entities and the roles that they play.

Table 3.5. Institutions involved in electricity ownership, regulation and policy

Government department or agency	Description	Energy policy	Regulation (electricity sector)	Ownership (electricity sector)
Cabinet of Ministers	<ul style="list-style-type: none"> • Highest executive body responsible for supervision of state policy in the energy sector and power industry; • Sets Public Service Obligations on electricity market players; • Owns SOEs in operation in the electricity sector (see above section); • Steers ownership policy of state. 	✓	✓	✓
Ministry for Development of Economy, Trade and Agriculture	<ul style="list-style-type: none"> • Formulates state policy on SOEs; • Defines general principles and strategic priorities for management of SOEs. 	✗	✗	✗
Ministry of Finance	<ul style="list-style-type: none"> • Owner of Ukrenergo (transmission system operator); • Involved in setting dividend policy for SOEs and approving state guarantees (see below). 	✗	✗	✓
Ministry of Energy	<ul style="list-style-type: none"> • Central body that forms and implements state policy within the energy sector; • Develops and monitors the Energy Strategy of Ukraine; • Defines strategy and methodology for constructing facilities for energy generation; • Owns electricity generation SOEs and electricity supplier of last resort. 	✓	✓	✓
State Property Fund	<ul style="list-style-type: none"> • Privatisation agency; • Owner or part owner of SOEs in electricity generation and supply/distribution 	✗	✗	✓
National Energy and Utilities Regulatory Commission (recently changed from an independent authority to a special agency subordinated to the CMU)	<ul style="list-style-type: none"> • Adopts market rules for the day-ahead and intra-day markets, as well as for the retail electricity market; • Develops transmission, distribution and commercial metering codes, and licensing terms; • Participates in the formulation of Public Service Obligations (together with the CMU) • Sets regulated prices and tariffs in the energy and utilities sector • Adopts investment programmes of SOEs operating in the sector (<i>Note: some functions have been modified under recent changes to the NEURC's status</i>) 	✗	✓	✗
State Nuclear Regulatory Inspectorate	<ul style="list-style-type: none"> • Ensures the formation and implementation of state policy in nuclear security. 	✗	✓	✓
State Inspectorate on the Energy Supervision	<ul style="list-style-type: none"> • Implements state policy in electricity and heat supply; • Monitors security of electricity supply; • Monitors technical aspects of the activities of <i>oblenergospets</i> and other enterprises connected to the IPS of Ukraine 	✗	✓	✗

Note: These institutional arrangements were in place as of August 2019 and may be subject to change.

Source: (OECD, 2019^[6])

Energy strategy and policy

The Cabinet of Ministers of Ukraine (CMU) is the highest executive body responsible for collective decision-making including the supervision of state policy in the energy sector. Within this framework, the CMU is

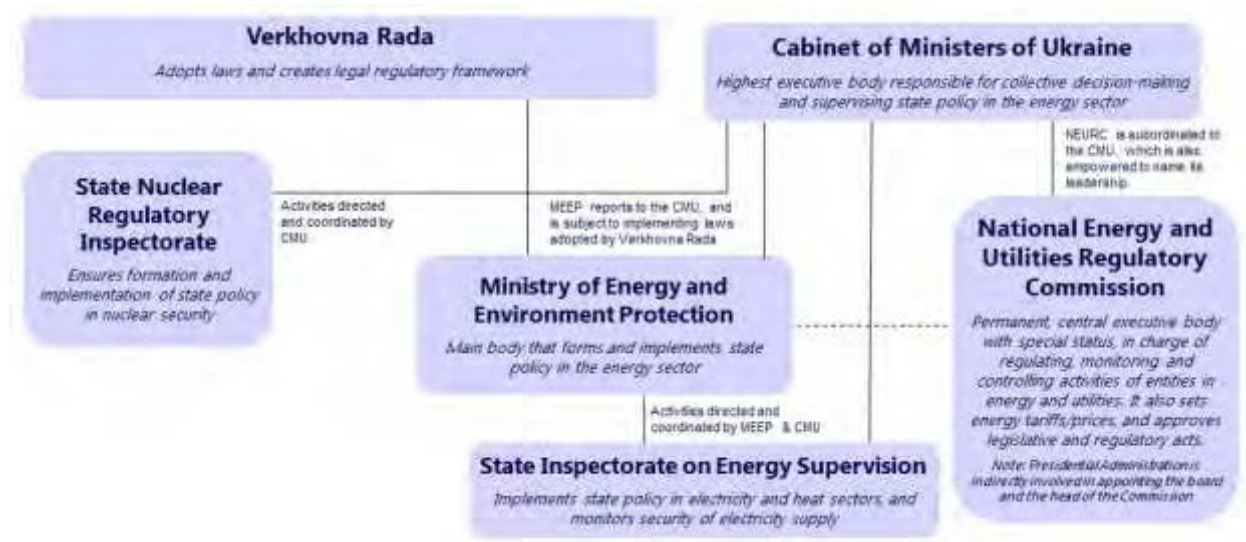
also responsible for setting public service obligations on electricity market players in order to cap household electricity tariffs.

The energy policy is formulated and implemented by the Ministry of Energy (ME)– (previously the Ministry of Energy and Environment Protection), based on priorities set out by the Government through key strategic documents such as the Energy Strategy through 2035.

The ME reports to the CMU, as well as the *Verkhovna Rada* (the parliament) and to the Office of the President of Ukraine, when required (Ministry of Energy Questionnaire, 2019). The Ministry is responsible for tracking and monitoring results of the Energy Strategy of Ukraine, and submitting annual progress reports to the CMU and the National Security and Defence Council. Along with energy policy implementation, the ME measures economic incentives, monitors and reports on energy demand and forecasts, and defines the strategy and methodology for constructing facilities for energy generation.

As shown in Figure 3.3, both the CMU and ME are owners of important SOEs operating in the energy sector, which raises important concerns regarding a potential overlap between their roles as dual owners and policy makers.

Figure 3.3. Ownership entities in the energy sector of Ukraine



Source: (OECD, 2019^[6])

Energy regulation and supervision

Four main bodies are involved in energy regulation and supervision in Ukraine. These include the State Inspectorate on the Energy Supervision and the State Nuclear Regulatory Inspectorate; which - together with the CMU and the MEEP – work on implementing the state policy in the energy sector. The State Inspectorate on the Energy Supervision (SIES) is focused on electricity and heat supply, and on monitoring the security of electricity supply. It is also responsible for monitoring technical aspects of the activities of *oblenergoh* (which have become distribution system operators and suppliers) in the electricity market.²⁸

²⁸ The SIES is currently operating within the structure of Ukrenergoh.

The State Nuclear Regulatory Inspectorate, on the other hand, is focused on nuclear security issues (Ukrenerg Questionnaire, 2019; Ministry of Energy Questionnaire, 2019).

In addition, the National Energy and Utilities Regulatory Commission (NEURC) is an executive body with a special status (formerly organised as the “independent” regulator) responsible for adopting market rules for the day-ahead, intra-day, balancing and ancillary services markets, as well as for the retail electricity market. It also develops transmission, distribution and commercial metering codes, and licensing terms (NEURC Questionnaire, 2019). Since the launch of the new electricity market, electricity prices are set based on bilateral contracts between market participants, and NEURC is no longer involved in the wholesale electricity price setting or in cross-subsidisation (although the Market Operator sets price caps on electricity purchased and sold on the market based on market rules adopted by NEURC). However, it will continue to regulate prices for electricity transmission and dispatching, distribution, and for universal service providers and the suppliers of last resort. Subject to recent legislative amendments, NEURC can investigate breaches regarding the functioning of electricity and natural gas markets and set cap prices on electricity market segments.

As evidenced by evaluation reports from international financial institutions, including from the Energy Community Secretariat, several shortcomings have been identified with the governance and independence of the regulator (Energy Community Secretariat, 2018^[28]). Recent efforts to address these shortcomings, have unfortunately, not been seen through.²⁹ In a ruling made by the Constitutional Court (decision No. 5-p/2019 June 13, 2019), certain provisions of the law establishing the independence of the regulator were deemed unconstitutional and would expire end 2019. To address this potential *impasse*, on 19 December 2019, the *Verkhovna Rada* of Ukraine adopted an amendment to the Law “On Amendments to Some Legislative Acts of Ukraine on Ensuring Constitutional Principles in the Fields of Energy and Utilities.” The amendments have resulted in the transfer of NEURC to a permanent central executive body with special status, and have subordinated it to the Cabinet of Ministers of Ukraine. The Law also transfers the rights to name NEURC’s leadership to the CMU, while other amendments aimed to expand its powers in case of market dysfunction. Some observers view the change of NEURC’s status as temporary and necessary to operate in light of the Court’s decision. Yet, in view of the Energy Community Secretariat’s requirements for integration into European energy markets, the current arrangement would not solve the issue of regulatory independence. Moreover, these changes are disruptive to the role of the NEURC in being an effective regulator in a formative time in the development of the electricity markets in Ukraine.

3.4. SOE ownership model and institutional set-up

As mentioned, state ownership is decentralised in Ukraine, with over 85 different state institutions exercising ownership over a portfolio of 3700 companies. No centralised authority coordinates or oversees SOE ownership practices. Most of these disparate ownership entities combine multiple roles, including exercising ownership rights, formulating state policy and setting regulation. This often results in a conflict

²⁹ Note that in May 2019, the Energy Community Secretariat acknowledged efforts to increase independence and market reform ambitions of the authority, including through enhanced transparency around the selection of new Commissioners, which was viewed as an important achievement towards *de facto* independence of NEURC (though the President still officially appointed the Commissioners). An important area which was not addressed in May 2019 was the financial independence of the regulator (Energy Community Secretariat, 2018^[28]); (Energy Community Secretariat, 2019^[74]). It should be noted, however, that despite the improvements made in early 2019, the rushed appointment of new Commissioners at the full discretion of the President in October 2019 has given way to a perception that there is a lack of commitment to follow procedures set out in the law.

of interest and impaired ability of the ownership entity to manage SOEs effectively and professionally, with a view to enhance their performance and raise accountability.

The 2006 Law of Ukraine "On the Management of State Assets" (Law 185-V), sets out the overarching legal framework for the exercise of ownership rights in SOEs. It was the first attempt to consolidate the fragmented system of state ownership in Ukraine, and its authors had intended to empower the CMU to act as a centralised ownership entity, moving away from the decentralised model of ownership. Alas, the law that was actually passed was not as ambitious as its authors had intended, and centralisation of state ownership lacked political support, but it did introduce the first overarching legislation pertaining to SOEs with the aim of setting out the institutional roles and responsibilities involved in state ownership. The law has since been amended in various iterations, including the latest 2016 amendment, and remains the reference law with regard to SOE governance (OECD, 2019^[28]).

As per Ukrainian legislation, three key institutions are involved in state ownership from a whole-of-government perspective: the Cabinet of Ministers, the Ministry of Finance and the Ministry for the Development of Economy, Trade and Agriculture (previously known as the Ministry for Development of Economy and Trade - MDET). All exercise shareholder rights in SOEs in their own right, while simultaneously having the broader mandate to shape the institutional, legal and policy environment in which SOEs operate [see Table 3.6 for more details on their respective roles].

The MDETA establishes the ownership policy for SOEs, monitors the performance of SOEs and publishes an annual aggregate report on top-100 economically important SOEs (currently being phased out). The report provides financial and operational results of the largest SOEs, and highlights key financial data on the performance of individual SOEs and key sectors of the economy where the state is present. In July 2019, the MDETA launched a first e-portal that contains financial indicators for the entire SOE portfolio under the control of central executive authorities. The transition to an e-platform represents a significant improvement in transparency and disclosure practices by the state towards the general public.

The Ministry of Finance is responsible for financial and fiscal oversight of SOEs. In this capacity, the Ministry formulates and implements the dividend policy (together with the MDETA); monitors the fiscal impact of state assets; and *de facto*, as part of budgetary approvals processes, approves state subsidies provided by other ministries in charge of sectorial policies. When exercising ownership rights over Ukrenergo, the Ministry purports to be separating these overarching ownership responsibilities at arms-length – but they could in fact pose some potential conflicts of interest [More detailed coverage of the role of the Ministry of Finance and other institutions vis-à-vis Ukrenergo will be covered in Part II of this report].

Over the last few years, the CMU has aimed to centralise some ownership functions, including identifying the strategic companies that are not slated for privatisation, and approving the list of SOEs that should be priorities for privatisation. Moreover, it has established a centralised nomination committee responsible for overseeing nominations of supervisory boards in economically important SOEs. As mentioned, the CMU also plays a key role in energy sector policies and setting public service obligations. Such responsibilities, if not separated at arms-length could pose some potential conflicts of interest. The situation is further exacerbated by the placement of the regulator, NEURC, under the responsibility of the CMU.

Table 3.6. State ownership in Ukraine: institutional framework

Institution	Responsibilities to SOEs
Cabinet of Ministers - Highest executive authority; - Collegial body chaired by the Prime Minister; - Accountable before the Parliament	<ul style="list-style-type: none"> • Assigns responsibility for governance of state-owned enterprises to executive authorities and collective public bodies; • Exercises decision-making authority with respect to the establishment, reorganisation and liquidation of entities and assigns responsibility for control over their operations to relevant supervisory bodies; • Sets performance criteria for management of state-owned enterprises and the process for application of these criteria; • Approves the list of state-owned enterprises or assets that are strategically important for the national economy and security; and defines non-economic or public policy objectives accordingly; • Establishes the nomination committee for the competitive selection of CEOs and independent SB members of SOEs, responsible for appointment and approval of representatives of the state in the SBs of SOEs; • Enacts the dividend policy set by the Ministry of Finance and MDETA.
Ministry for Development of Economy, Trade and Agriculture	<ul style="list-style-type: none"> • Defines general principles and strategic priorities for the management of state-owned enterprises, including corporate rights held by the State; • Developed the “Basic Ownership Policy” for overall state-ownership; • Responsible for aggregate reporting on SOE portfolio; • Controls the authorities responsible for the management of corporate rights of the State and monitors the performance of state-owned enterprises under their oversight; • Formally responsible for formulating state dividend policy in consultation with Ministry of Finance; • Identifies the state-owned enterprises that are not subject to privatisation (at the suggestion of authorities responsible for management of corporate rights of the state).
Ministry of Finance	<ul style="list-style-type: none"> • Responsible for the formulation and implementation of the state dividend policy (together with the MDETA); • Monitors the fiscal impact of state assets; • Approves budget contributions towards subsidies in sectors for which line Ministries manage and oversee SOEs.
Line Ministries	<ul style="list-style-type: none"> • Exercise decision-making authority with respect to the establishment, reorganisation and liquidation of SOEs under their oversight; • Approve draft statutory documents, annual financial and investment plans, as well as statutes of SOEs within the scope of their authority; • Appoint and dismiss executives of SOEs in the absence of independent supervisory boards; • Organise annual audits of their SOEs, among other aspects.
State Property Fund	<ul style="list-style-type: none"> • Exercises right to establish, manage and liquidate SOEs; • Acts as a lessor of integral property complexes of SOEs; • On behalf of the state, acts as a founding participant of business entities or shareholder in partially privatised companies; • Responsible for establishment and maintenance of the Unified Register of State-Owned Property; • Manages real estate owned by unitary SOEs (when required by law)

Source: (OECD, 2019).

Part II. Corporate Governance of Ukrenergo

4. Introduction

4.1. About Ukrenergo NPC JSC

The National Power Company Ukrenergo (Ukrenergo NPC JSC) is Ukraine's sole electricity transmission operator. It is a monopoly company - 100% state-owned, with the Ministry of Finance exercising shareholder rights on behalf of the state. The company is responsible for the operational and technological control of the Integrated Power System (IPS) of Ukraine and high voltage electricity transmission via trunk power grids from generating plants to regional distribution companies. The company also coordinates transmission system operations and manages cross-border electricity flows with neighbouring countries (Ukrenergo, n.d.^[30]).

Ukrenergo was established pursuant to Order No. 54 of the Ministry of Energy of 15 April 1998, as a result of the merger of two SOEs: the "National Dispatcher Center of Ukraine" and the electric company "Ukrelektroperedacha" (Government Portal, 2018^[31]). The company is currently undergoing significant change in order to meet the requirements established by Law No. 2019-VIII on the electricity market (hereafter "Electricity Market Law") which calls for the establishment of an independent and certified transmission system operator (TSO) synchronously interconnected with the ENTSO-E. The law draws up a list of requirements with respect to independence and certification of the TSO, including: 1) ownership unbundling; 2) transmission system ownership; and 3) corporatisation of Ukrenergo into a joint-stock company, in view of ensuring independence of electricity transmission from generation and supply. The certification itself is a prerequisite for obtaining the necessary license for performing activities in the Ukrainian energy market.³⁰

Once certified as the TSO, Ukrenergo will perform new functions and obligations under the Electricity Market Law, including ensuring the organisation and functioning of two new electricity market segments: the balancing and ancillary services markets; and performing the function of the Commercial Metering Administrator (CMA) and Settlements Administrator (Table 4.1.). It should be noted that, in its new role in the balancing and ancillary services market, Ukrenergo will play an active role to introduce more players to encourage competition in those segments.

³⁰ Currently, the company is allowed to operate in the new market under the old license until it passes certification (NEURC questionnaire, 2019).

Table 4.1. Ukrenergo's new functions in the wholesale electricity market

Function	Key elements
Operator of the Ancillary Services Market	Ukrenergo is in charge of ensuring operation of the ancillary market and acquiring ancillary services. For the time being, this market remains inactive. During July - October 2019 no qualified ancillary service providers were registered by Ukrenergo.
Operator of the balancing market	The balancing market ensures that energy supply always meets demand. In this context, the TSO is in charge of balancing volumes of electricity generation and import with electricity consumption and export.
Commercial Metering Administrator	Organisation and administration of commercial electricity metering in the electricity market (includes development and administration of the commercial metering code and other regulations related to electricity metering; collection of commercial electricity metering data from service providers; registration of service providers, etc.).
Settlement Administrator	Activities include development and administration of market rules; registration of balancing participants; and calculation of the price and volume of electricity imbalances.

Source: Charter of Ukrenergo, July 2019.

Current organisational structure

Ukrenergo does not currently have any actual subsidiaries, however its network includes eight regional sub-divisions covering the entire territory of Ukraine (Dniprovska, Donbaska, Zakhidna, Krymska, Pivdenna, Pivdenno-Zakhidna, Pivnichna, Tsentralna) as well as three separate technical sub-divisions which are full-fledged daughter companies in terms of management, but have no separate legal status (Boytsun, 2017_[32]).³¹ They have their own CEOs and senior management but are administratively subordinate to Ukrenergo's management. These include:

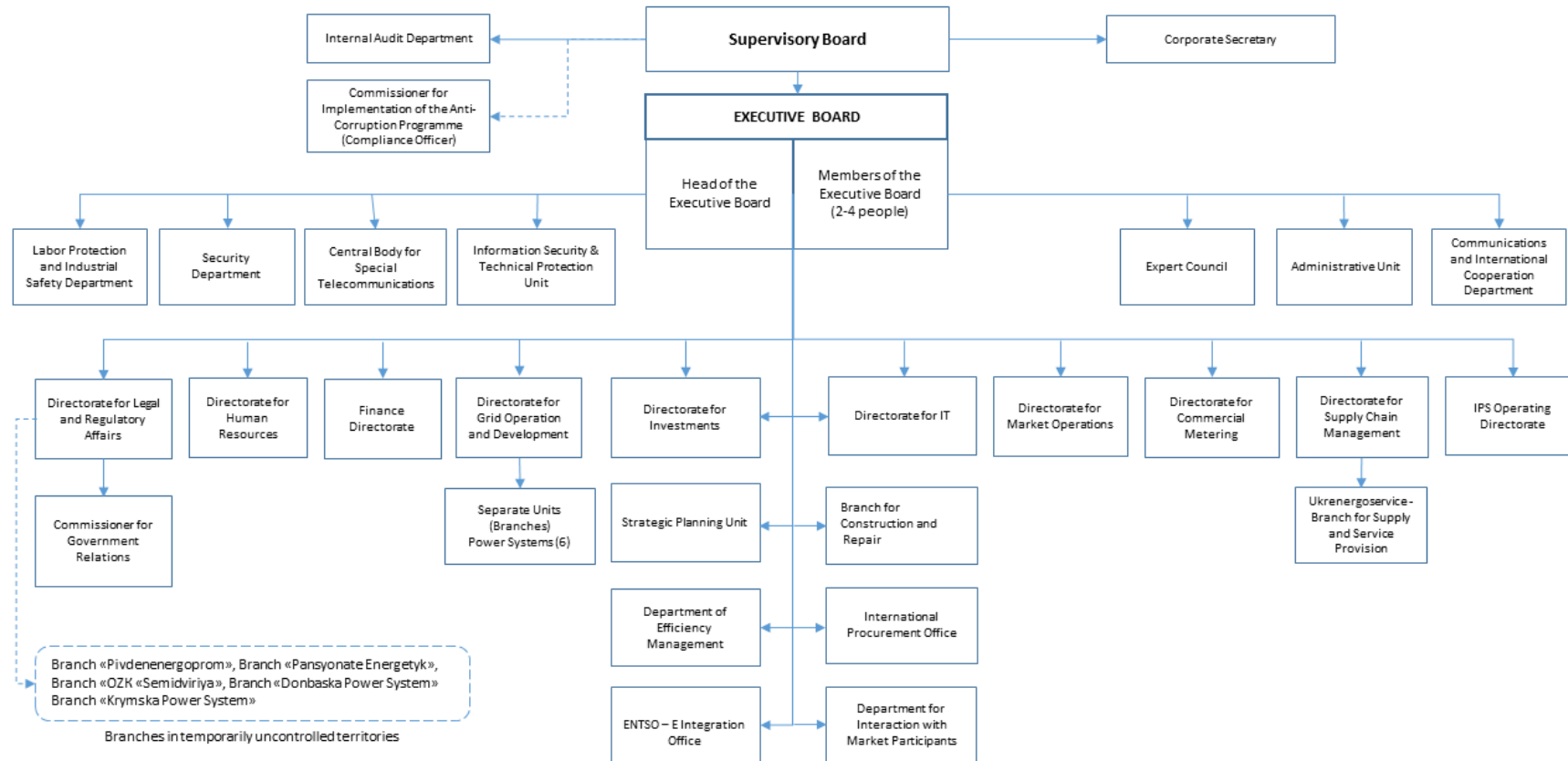
- *VinnytsiaElectroTekhnologiya*: a production company in charge of developing and implementing technologies and equipment aiming at reducing electricity losses, as well as tools and trainings related to maintenance and repair of power grids and electrical substations.
- *Ukrenergoservice*: a service support company, in charge of ensuring an open and transparent procurement process of goods and services, as well as of providing material and technical support in other areas (transport, catering, booking, conference services, etc.).
- *Scientific and Design Centre for Development of the IPS of Ukraine*: in charge of researching and designing innovative technologies to ensure the development of the Ukrainian power system.

It is worth mentioning that two of Ukrenergo's regional units (Donbaska and Krymska) and five additional sub-divisions (Pivdenenergoprom; Recreation Centre "Enerhetyk"; Donbaska Elektroenerhetychna Systema; and Krymska Enerhetychna Systema) are currently located in non-government-controlled areas of Ukraine and are therefore not reflected in the company's current structure (Figure 4.1).³²

³¹ Sources differ with regards to the exact number of Ukrenergo's "branches". The company's financial statement (audited by Deloitte) mentions the existence of 11 branches – while Ukrenergo's sustainability report mentions the existence of eight regional units and four sub-divisions. (Other sources count six regional units).

³² Ukrenergo filed a lawsuit against Russia in August 2019, claiming compensation from unlawful expropriation of Ukrenergo's infrastructure facilities after the annexation of Crimea by Russia (Unian, 2019_[61]).

Figure 4.1. Corporate structure of Ukrenergo (as per September 2019)



Source: Ukrenergo, 2019.

Note: Two of the technical sub-divisions are not named in the corporate structure.

4.2. Financial performance and tariffs

Ukrenergo is one of the largest SOEs in Ukraine. As of May 2019, the company had 8,643 employees – 97.5% of whom had a permanent contract (Ukrenergo questionnaire, 2019). As of 29 July 2019, the total value of Ukrenergo’s assets amounted to UAH 28 billion. In terms of financial performance, Ukrenergo’s annual report for 2018, for which financial statements were audited by an independent external auditor, found that the company was operating a net profit of approximately UAH 2.6 billion (approx. USD 92.4 million) in 2018, up from UAH 1.7 billion (approx. USD 62.5 million) in 2017 [Table 4.2] (Provzvut.com.ua, n.d.^[33]).

Table 4.2. Financial indicators for Ukrenergo: statement of financial position (in thousand UAH)

	2016	2017	2018	2019
EBITDA	5,099,173	5,382,491	3,000,609	4,204,096
Net profit	3,012,096	1,748,031	2,558,941	1,864,095
Total non-current assets	19,865,612	23,014,315	25,596,516	55,895,721
Total current assets	3,855,903	3,628,406	3,217,320	8,518,251
Total assets	23,721,515	26,642,721	28,813,836	64,413,972
Total equity	7,329,706	8,966,730	11,622,836	37,433,157
Total non-current liabilities	1,108,493	1,661,041	6,206,751	10,564,321
Total current liabilities	15,283,316	16,014,950	10,984,249	16,416,494
Total liabilities	16,391,809	17,675,991	17,191,000	26,980,815
Total Liabilities and Equity	23,721,515	26,642,721	28,813,836	64,413,972

Source: (Deloitte, 2018^[34]); (Deloitte, 2017^[35]); (Deloitte, 2019^[35])

Note: Annual figures for 2018 might differ from those reported by Deloitte in 2019, due to changes in valuation methods and accounting policies.

The company obtains almost all of its revenue (approximately 95%) from electricity transmission and dispatch control services and earns additional income from other activities (e.g. sales of obsolete equipment). Reflecting its monopoly status, tariffs for electricity transmission and dispatching services are regulated and approved by the National Energy and Utilities Regulation Commission (NEURC).

The company’s financial performance has been improving since 2015, when operating income was adversely affected by the conflict in Donetsk and Luhansk where the company’s regional unit (Donbaska) continues to operate. Due to its strategic role, the tariffs for the company’s services have been gradually increasing in 2016 and 2017 to compensate for these losses (Ukrenergo, 2018^[36]). According to the 2018 financial statements of Ukrenergo (Table 4.3), the company was profitable during both 2017 and 2018; and the tariff set for the company by NEURC was high enough to sustain profitable activities. Since the launch of the market, as per commitments to the European Union and the IMF, changes to the tariff scheme across sub-sectors have been introduced. The introduction of the new law on the electricity market required Ukraine to introduce pro-market elements, including through the establishment of bilateral contracts to liberalise tariff-setting. With the launch of the new market, Ukrenergo’s tariffs increased as it acquired new functions (for instance, serving as a commercial metering and settlements administrator, while compensating the guaranteed buyer for “green tariffs”).

However, it should be noted that Ukrenergo is still operating at a very high return-on-equity (ROE) ratio – for 2020 this is estimated to be between 35-55% according to the company’s Corporate Strategy 2019-2028. This is a much higher rate that what might be expected from an average utility company in an industry where less than 10% is considered a benchmark. The reasons for high ROE are a result of a combination of high profitability due to the rate of the regulated tariff, financial leverage and the way the assets have been counted in the company’s books. According to company representatives, profits should cover all

capital expenses, operational expenses, and dividend (currently standing at 90%) and corporate tax obligations to the state. The company forecasts that its ROE will drop to around 10% by 2028. It is reported that more steps will be taken to raise disclosure standards and to ensure that the balance sheet gives a fair view, including in terms of the assets and liabilities of the company. In 2020 the assets are being evaluated by a third-party accounting firm in view of compliance with IFRS standards.

Table 4.3. Ukrenergo's financial results: Profit and Loss Statement, 2016-2019.

	2016	2017	2018	2019
Revenue from electricity and dispatch services	7,245,964	8,305,235	6,044,712	26,326,366
Other income	253,442	185,750	328,296	-
Staff costs	(1,896,812)	(2,215,836)	(2,396,720)	2,233,823
Depreciation and amortisation	(583,883)	(691,958)	(812,344)	979,777
Impairment of property, plant and equipment	-	(320,147)	-	*
Impairment of trade and other accounts receivables	-	(294,665)	-	2,205,120
Other operating expenses	(608,545)	(567,985)	(603,692)	(6,318,769)
Finance income	291,268	340,166	320,043	2,705,065
Finance costs	(117,818)	(243,115)	(322,729)	(338,958)
Foreign currency exchange gain/(loss), net	(1,177,673)	(1,865,531)	671,095	-
Profit before income tax	3,157,282	2,631,914	3,228,661	2,318,126
Income tax expense	(405,733)	(569,374)	(625,333)	(454,031)
Profit of the year	2,751,549	2,062,540	2,603,328	1,864,095
<i>Items that will not be reclassified subsequently to profit or loss:</i>				
Actuarial gain/(loss) on post-employment and other long-term employee benefit obligations	(78,392)	(49,240)	52,778	-
Deferred income tax benefits	14,111	8,863	-	-
Other comprehensive gain/(loss)	(64,281)	(40,377)	52,778	31,054,568
Total comprehensive income for the year	2,687,268	2,022,163	2,656,106	27,298,428

Source: Deloitte, 2017 and 2018; (Deloitte, 2019^[35])

Note: Some discrepancy can be found between these numbers and those cited in other sources such as Ukrenergo's sustainability report (2018) and the Prozvit platform. The differences may be explained by the accounting standard applied, i.e. national accounting standard versus IFRS.

* Effective from 31 December 2019, the Company applies a revaluation model to account for its property, plant, and equipment. As a result, the company recorded net revaluation surplus in the amount of UAH 28,067,374 thousand (including UAH 3,166,942 thousand of impairment within other operating expense and UAH 31,234,316 thousand of surplus within other comprehensive income) (Deloitte, 2019^[35])

NEURC is currently using a cost-plus approach to set tariffs based on the company's operating expense and capital expenditure needs. A new "stimulatory" tariff setting mechanisms should be introduced within the course of 2020, to attract investment into reconstruction and increase the quality of servicing through the modernisation of the energy infrastructure. Under this new model, tariffs for transmission (but also distribution) will be set according to the Regulatory Asset Base (RAB) model and calculated on the basis of the assets employed in delivering the service. Thus, key players of the electricity market such as Ukrenergo will be incentivised to increase the value of their assets through technological upgrades and efficiency measures (Ukrenergo, 2018^[37]).

Tariffs for the second half of 2019 were initially approved by NEURC's Resolutions No. 954-955 of 07 June 2019 and increased from the previous quarter to take into account additional expenditures previously carried out by the "single buyer" Energorynok.³³ These tariffs were, however, lowered by 10% following a

³³ This includes electricity losses in transmission grids and compensation to electricity producers operating at a guaranteed green tariff (wind farms, SPPs and other renewable energy sources) - both covered by Energorynok before its dissolution (Ukrenergo, 2019^[62]). In the new market model the tariff for transmission is aimed to cover cost incurred by Ukrenergo to compensate the Guaranteed Buyer for the difference between the cost of electricity

decision of the District Administrative Court of Kyiv to suspend NEURC's Resolutions No. 954-955 in July 2019 (Box 4.1),³⁴ and a new resolution was adopted early July 2019 (Resolution No. 1411) setting tariffs for UkrenergO at 312.14 UAH/MWh for electricity transmission and 8.90 per UAH/MWh for dispatch control starting 1 August 2019. The tariffs were further reduced in September 2019, down to 116.54 UAH/MWh, after the government of Ukraine elaborated a list of mechanisms to lower the electricity price for end consumers by 15-20%. The average price of electricity for industrial consumption has grown by 20-25% since the launch of the electricity market on 1 July (Official website of the President of Ukraine, 2019^[38]). Tariffs were revised in December 2019 to reflect new developments relative to the electricity market and obligations imposed on the company.

Box 4.1. Cancellation of NEURC resolutions setting UkrenergO tariffs for transmission and dispatching

In June 2019, JSC Nikopol Ferroalloy Plant (NFP) - one of the largest global producers of manganese alloys located in Ukraine filed a lawsuit demanding annulment of NEURC's Resolutions No. 954 and 955, which set the tariffs for electricity transmission and dispatch services of UkrenergO for the second half of 2019. The complaint was lodged on the grounds that the growth in tariffs for UkrenergO's services was unlawful and would significantly increase the electricity cost for industrial consumers, creating a competitive disadvantage for the company.

As a result, the District Administrative Court of Kyiv ruled in favour of the plant and decided to suspend NEURC's Resolutions, thus forcing UkrenergO to operate on the basis of the previous 2018 tariffs, which did not cover UkrenergO's additional operating costs in the new electricity market. This has significantly impacted the company's finances, resulting in a deficit of UAH 2.4 billion for the month of July 2019, and depriving therefore the company of the ability to compensate the Guaranteed Buyer, which is responsible for payment of the green feed-in tariff to renewable power plants (UkrenergO, 2019^[8]).

On 22 July, NFP – along with four other metallurgical companies - filed a new lawsuit to suspend the Regulator's new Resolution No. 1411 setting tariffs for electricity transmission and dispatch services for UkrenergO from 1 August 2019. While the court lifted the injunction issued in July and unblocked the tariffs, the five plaintiffs were exempted from having to pay the full amount of the tariff to UkrenergO (UkrenergO, 2019^[39]).

While the current tariff is said to be enough to cover UkrenergO's expenses, the company has been arguing that it falls short of covering additional expenses associated with providing "competitive" remuneration to supervisory and management board members, including bonuses (as NEURC methodology for calculating staff-associated costs only takes into account average salary levels for the whole company).

purchased by it at the green tariff price (which is high to incentive renewable energy production) and its costs of selling on wholesale electricity market, and costs associated with the settlement of the electricity imbalance of the balancing group of the green tariff producers.

³⁴ The tariff reduction is a consequence of the decrease in costs of electricity bought to compensate for technical losses. Electricity price went down due to the Public Service Obligation (PSO) established by the CMU, which has allowed UkrenergO to buy up to 80% of electricity on e-auctions at margin prices from Energoatom (a SOE operating all four nuclear power stations in Ukraine); and the remaining 20% at the average electricity price on the day-ahead market (UkrenergO, 2019^[63]).

The launch of the new electricity market prompted the adoption of a new Resolution (No. 483) by the Cabinet of Ministers of Ukraine (CMU) imposing Public Service Obligations on selected market players (distribution companies, the TSO, and selected electricity producers) mainly to guarantee a constant price of electricity – both for industry and domestic consumers.³⁵ This resolution has been amended several times since its adoption on 5 June 2019 with a relative lack of transparency and the most recent version was said to have been adopted in December 2019 (Expro Consulting, 2019^[40]). While the Resolution may be subject to change, the current text stipulates that the TSO is obliged to purchase 80%³⁶ of the electricity volume required to compensate for grid losses at the day-ahead market; as well as to compensate the Guaranteed Buyer for the purchase of electricity from renewable energy sources at the green tariff. The Energy Community Secretariat has pointed to the fact that the new PSO scheme is not compliant with the requirement stemming from the electricity acquis that the network operators (the TSO and DSOs) have to purchase electricity for covering the network losses according to transparent, non-discriminatory and market-based procedures (Energy Community Secretariat, 2019^[23]).

While the Resolution does not contain any provision on compensating companies for their PSO, Ukrenergo's tariff has been partly adjusted to reflect additional expenditures incurred under this framework. The company does not, however, consider that the current tariff compensates adequately the costs on green tariff payments as it is argued that the "Guaranteed Buyer disregards the provisions of CMU Resolution No. 483 establishing that the cost should be partially covered at the expense of its own profit." In addition, under the current PSO scheme, Ukrenergo faces the burden of non-payment from distribution companies and other operators under the transmission tariff, with an estimated deficit of UAH 1.58 billion (9% of total expenses) in the second half of 2019 (Ukrenergo, 2019). It adds up to previous debt from Energorynok (under the previous model) and other issues associated with lower generation from nuclear power plants (than the amount calculated in the transmission tariff), amongst other aspects. In total the amount of deficits have been estimated by Ukrenergo to amount to 2.5 billion UAH in 2019 alone (UNIAN, 2020^[25]). Despite this, Ukrenergo representatives argue that the company has been able to compensate these losses from revenues from other activities.

4.3. Taxation and dividends

According to Ukrenergo, the company is subject to the full range of taxes and duties applicable to all corporate businesses in Ukraine. The company pays corporate income tax on a basic level of 18% - totalling UAH 625 million in 2018 and UAH 569 million in 2017 (Deloitte, 2018^[34]). In addition, CMU Resolution No. 138 establishes the requirement for all fully owned SOEs (with some exceptions) to transfer a portion of their net profit to the state budget. Rates are determined through a CMU resolution on an annual basis (but may be subject to adjustments explaining why some years have two different rates applicable) and vary between 30% and 90%, depending on the company's net profits and projected macroeconomic indicators. According to CMU Resolution No. 364 of April 2019, the amount of dividends to be paid by Ukrenergo to the state budget has been set at the level of 90% for 2019, as it is the case for all others SOEs with over UAH 50 million net profit for the reporting period (Table 4.4).

³⁵ Public service obligations are determined by the Ministry of Energy (upon proposals of the NEURC as the regulator) and submitted to the Cabinet of Ministers of Ukraine for approval.

³⁶ The Energy Community Secretariat has noted that new PSO Act also amends the wording on the electricity volumes to be purchased for covering the network losses from "not less than 80%" to "at the amount of 80%", without specifying how the 80% is to be calculated; whether each DSO and TSO shall procure every hour the 80%, or the monthly volume of each DSO and TSO shall be 80%, thus allowing the purchase of different volumes at different hours (Energy Community Secretariat, 2019).

Table 4.4. Revenue transfers of UkrenergO to the state budget (2014-2019)

	2014	2015	2016	2017 (before 04/07)	2017 (after 04/07)	2018 (before 01/07)	2018 (after 01/07)	2019
Dividend rate	30%	30%	75%	75%	40%	40%	75%	90%
Legal basis	CMU Resolution No. 138 of 23/02/2011	CMU Resolution No. 138 of 23/02/2011	CMU Resolution No. 1156 of 30/12/2015	CMU Resolution No. 1156 of 30/12/2015	CMU Resolution No. 571 of 04/07/2017	CMU Resolution No. 571 of 04/07/2017	CMU Resolution No. 1156 of 30/12/2015	CMU Resolution No. 363 of 24/04/2019
Net profit paid to the state budget (in thousand UAH)	343,065	630,790	892,434	1,172,371		1,310,904		

Source: UkrenergO questionnaire, 2019.

On 29 July 2019, the company was corporatised and transformed from a unitary enterprise into a private joint-stock company with 100% of the shares owned by the Ukrainian state through the Ministry of Finance. After its corporatisation, UkrenergO will continue providing dividends to the state (as its sole shareholder) in accordance with the Law No. 185-V on Corporate Management of State Property of September 21, 2006 (hereafter “Law on Management of State Property”). However, according to interviews with CMU officials, the dividend level is expected to be lowered to approximately 50% as per figures estimated as part of the current three-year budgeting process that has begun. According to UkrenergO’s representatives, the frequent change in dividend rates makes long-term planning and implementation of large investment projects very difficult for the company.

The high dividend rate also deprives the company of investment resources, which should in theory be considered when determining the applicable rate. Repayments of the funds borrowed to finance capital investments in construction projects are also generally deducted from the taxable amount (net profits). It is for this reason that the company did not make any payment to the state budget in 2018.

The deadline for payment of dividends is set on July 1 each year. SOEs failing to pay on time are subject to a fine or a penalty according to the Law on Management of State Property.

Box 4.2. Investment Programme of UkrenergO

UkrenergO’s investment programme is based on the implementation of provisions of the Ten Year Network Development Plan – both of which are approved by NEURC, as the regulator of the electricity sector.

According to the company’s 2019-2028 corporate strategy, the main tasks defining the transmission system development in the next 10 years will be:

- Strengthening the security of power supplies and transmission system at the level of European TSOs;
- Eliminating “bottlenecks” from the transmission system;
- Ensuring network configuration, which will make it possible to integrate new market players (generators and consumers) into Ukraine’s IPS;
- Reducing costs for maintaining the transmission system.

4.4. Funding and financing of Ukrenergo

Ukrenergo obtains all of its debt financing from International Financial Institutions (IFIs). This financing is provided in the form of sub-loans, which are backed by guarantees from the Ministry of Finance (Table 4.5).³⁷ The financing is used to fund large investment projects as well as salaries. The average interest rate for this type of borrowing ranges between 2% to 5% (in Euros). In 2018, the total amount of guarantees provided by the government of Ukraine for the loans obtained was UAH 14.9 billion (approximately UAH 15 billion in 2017). This includes the recent classification of long-term debt into current liabilities due to Ukrenergo's failure to comply with the financial covenants stipulated in loan agreements concluded between the Government of Ukraine and some international financial institutions (IBRD, EBRD, and EIB). This has led to a deficit of working capital amounting to UAH 7.7 billion (Ukrenergo, 2018^[36]). However according to legislation, the amount necessary to service Ukrenergo's debts is included in its tariff structure. According to the strategy plan of Ukrenergo, settlements with contractors under current investment projects are to be completed by 2025. Consequently, the current loan portfolio does not envisage disbursement of loan funds until 2025.³⁸

In addition, the European Union has also provided macro-financial assistance (amounting to EUR 1 billion) to Ukraine for implementing its commitments under the Memorandum of Understanding with the European Union. One of these undertaken commitments was to "reach significant progress in the implementation of the legislation on the electricity market, including enabling Ukrenergo to be certified as an independent transmission operator and unbundling of electricity generation from electricity transmission".

Ukrenergo is not the recipient of debt financing from state-owned financial institutions or any other private commercial lending institution and cannot pledge its non-current assets as collateral.³⁹ As per national legislation, Ukrenergo must seek approval from the Ministry of Finance and the CMU to obtain loans, guarantees or securities under a loan agreement. This requirement extends to short and long-term loans as well as external or internal borrowing. The process is administratively burdensome, and the decision to extend a guarantee can only be decided following the approval of the state budget. Finally, according to the Ministry of Finance, the company does not get any capital injection or subsidy from the state.

³⁷ A sub-loan refers to a subsidiary loan provided by the Ministry of Finance to finance a specific component or deliverable of a project.

³⁸ According to the general terms and conditions of loan agreements with IFIs, in the event of a non-compliance with any of the terms and conditions of the loan agreement, including the covenants, the institution may suspend further disbursements of the loan and/or require that the company repay in full the outstanding amounts (Ukrenergo, 2018^[36]).

³⁹ According to Article 5(5) of the Commercial Code of Ukraine, SOEs with more than 50% of state ownership shall not dispose of their assets without prior approval by the competent body. Without such approval, they cannot sell their property or conclude agreements that may have alienation of property as a consequence (CMU questionnaire, 2019).

Table 4.5. Financial support received by Ukrenergo in 2014-2018 (in thousand UAH)

Sub-loans by financial institutions backed by guarantees from the Government

Financial institution	Agreement	Funds Received				
		2014	2015	2016	2017	2018
International Bank for Reconstruction and Development (IBRD)	IBRD Agreement No. 48680-UE. Sub-Loan Agreement No. 28 000-04/123	553,641	164,880	735,861	-	-
IBRD	IBRD Agreement No. 8462 UE. Sub-Loan Agreement No. 13010-05/53	-	17,277	-	399,829	386,160
IBRD	IBRD Agreement No. F017661. Sub-Loan Agreement No. 13010-05/54	-	4,598	-	-	-
European Bank for Reconstruction and Development (EBRD)	EBRD Agreement No. 37598. Sub-Loan	808,902	1,006,471	416,286	162,421	47
EBRD	EBRD Agreement No. 40147. Sub-Loan Agreement No. 28010-02/169	262,883	922,586	1,213,165	197,830	394,612
European Investment Bank (EIB)	EIB Agreement No. 24668. Sub-Loan Agreement No. 28000-02/128	-	928,708	-	-	1,007,930
EIB	EIB Agreement No. 31143. Sub-Loan Agreement No. 15010-03/75	89,648	765,714	695,915	-	-
Kreditanstalt für Wiederaufbau (KfW)	KfW Agreement of 12/30/2011. Separate Agreement No. 2006 66 537. Sub-Loan Agreement No. 15 010-03/77	-	-	100,727	105,130	103,46
Total		1,715,07	3,810,236	3,161,856	865,21	1,892,219

Note: All sub-loans have been provided for investment project financing.

Source: Ukrenergo questionnaire, 2019.

5. Governance framework

5.1. Background for corporate governance reform of Ukrenerg

The corporate governance reform of Ukrenerg is, as mentioned earlier, primarily motivated by the need to meet the requirements set by the EU's Third Energy Package for obtaining certification as an independent transmission operator - which is a prerequisite for integration with the European energy markets. Those include (1) ownership unbundling to ensure the separation of transmission from generation activities; (2) corporatisation; and (3) ownership of the transmission system.

In addition, the corporate governance reform of Ukrenerg also falls within the broader framework of the SOE governance reform in Ukraine, which was launched in 2015 as a way to reduce fiscal losses and improve efficiency in the SOE sector (OECD, 2019^[1]). Spearheaded by the corporate governance reform of Naftogaz, the Ukrainian government adopted a series of legislative measures providing for strengthened disclosure, control and independence requirements in Ukrainian SOEs [see section 2.3 for more details], starting with large and strategic SOEs such as Ukrenerg, as a priority for reform.

In line with the Action Plan for the company's reorganisation [Box 5.1], Ukrenerg first established its Supervisory Board (and four board committees) in October 2018 following a competitive appointment process established under the MDETA-led centralised nomination committee. In a second step, the corporatisation of the company was confirmed in July 2019, bringing the company one step closer towards meeting the independence requirements established by the EU's Third Energy Package. However, challenges remain with regards to the ENTSO-E requirement for ownership of assets which are discussed further below.

Unbundling

In February 2019, Ukrenerg was placed under the ownership of the Ministry of Finance by order of the Cabinet of Ministers of Ukraine (Resolution No. 1001-p of November 2018). Previously, Ukrenerg and the largest electricity producers in Ukraine (including Energoatom and Ukrhydroenerg) all operated under the control of the Ministry of Energy, which resulted in potential conflicts of interest between the ownership and regulatory functions of the Ministry. It also conflicted with the independence requirements established by the EU's Third Energy Package, which foresees independence of electricity transmission from production with the aim of effectively separating monopoly activities from competitive ones and ensuring equal treatment of all customers (Supponen, 2019^[41]).⁴⁰

⁴⁰ Subordination of the TSO to the Ministry of Finance can also be found in other ENTSO-E countries such as the Netherlands, Finland, Latvia, Slovakia, and Montenegro (Ukrenerg, 2018^[36]).

Corporatisation

In March 2019, the Ministry of Finance approved the Action Plan for the reorganisation of Ukrenergo into a joint-stock company, in line with European Energy Community standards. This corporatisation plan envisaged an 18-step procedure and focused on the inventory of the company's assets and liabilities, their independent audit, and the review of the valuation report by the State Property Fund of Ukraine, amongst other aspects [Box 5.1].

Box 5.1. Action Plan for the reorganisation of Ukrenergo into a joint-stock company

As approved by Order of the Ministry of Finance No. 95, on 1 March 2019.

1. The Ministry of Finance adopts a decision establishing Ukrenergo's Inventory Commission (and approving its composition);
2. The Inventory Commission carries out a preliminary inventory of Ukrenergo's non-current assets; establishes a list of non-current assets subject to independent appraisal and submits it to Ukrenergo's Reorganisation Commission.
3. The Ministry of Finance approves the list of non-current assets subject to independent appraisal, along with the consolidated property inventory report.
4. The Ministry of Finance identifies state property of Ukrenergo that is not subject to privatisation and drafts the terms and conditions of further use thereof.
5. The Inventory Commission carries out a full inventory of assets and liabilities as of 31 March 2019 (appraisal date); and establishes the list of non-current assets based on the results of adjusted data on preliminary non-current assets inventory as of the appraisal date. The Inventory Commission submits records of the full inventory and the list of non-current assets to Ukrenergo's Reorganisation Commission.
6. Ukrenergo's Reorganisation Commission reviews the full property inventory report and the list of the company's non-current assets; agrees on them in a resolution included in the minutes of its meeting, and submits it for approval to the Ministry of Finance.
7. The appraiser conducts independent appraisal of Ukrenergo's non-current assets at the appraisal date and submits the related report and the opinion to the State Property Fund of Ukraine for review.
8. The State Property Fund of Ukraine reviews the property appraisal report, and the Reorganisation Commission receives materials on the independent appraisal of non-current assets. These materials are provided to Ukrenergo for the preparation of a preliminary balance sheet.
9. Ukrenergo prepares the preliminary balance sheet as of the effective date of the appraisal. (31.03.2019) based on the results of the inventory and revaluation of non-current assets.
10. Audit of accounting records and financial statements of Ukrenergo.
11. Submission of the transfer balance sheet, the audit report and other materials to Ukrenergo's Reorganisation Commission.
12. Ukrenergo's Reorganisation Commission prepares an appraisal report and submits it to the State Property Fund of Ukraine for review.

13. Ukrenergo's Reorganisation Commission drafts the Charter of the private joint stock company and submits it to the Ministry of Finance for approval.
14. The Ministry of Finance approves the property appraisal report and the Charter of the private joint stock company.
15. The Ministry of Finance decides on the issue and placement of shares of the private joint stock company.
16. The Ministry of Finance appoints the Members of the Supervisory Board of the private joint stock company.
17. Official registration of the wind-up of the state enterprise NPC "UKRENERGO".
18. Official registration of the private joint stock company created as a result of the reorganisation.

Before the company's transfer to the ownership of the Ministry of Finance, the Ministry of Energy had already approved a similar Action Plan in December 2017 (issued by Resolution No. 829-p of the Cabinet of Ministers in November 2017). However, the process became controversial after Ukrenergo's Reorganisation Commission decided, in October 2018, to temporarily transfer management powers of the company to its Chairman, former Deputy Energy Minister Mykhailo Blyzniuk, after it had rejected the valuation report of the company due to significant differences and errors in the documentation provided by Ukrenergo which have led to an "overestimation of the value of Ukrenergo's non-current assets of around UAH 32 billion".⁴¹ The move was perceived as an "interference of government officials in the management of the SOE" and a "deliberate obstruction of corporatisation" by Ukrenergo's officials, who contested the decision to the Commercial Court of Kyiv, without success (Interfax, 2018).

Upon the transfer of ownership responsibility from the Ministry of Energy to the Ministry of Finance, a new "Reorganisation Commission" was established pursuant to the Order of the Ministry of Finance No. 82 (dated February 22, 2019) to support the Ministry of Finance in this process. The commission was chaired by the Deputy Minister of Finance, Vasyl Shkurakov, and composed of 11 other high-ranking officials from the Ministry of Finance (6); State Property Fund of Ukraine (1); Ministry for Development of Economy and Trade (1); and Ukrenergo (3). The commission was in charge of developing a draft plan for the transformation of the enterprise (which provides for an inventory of assets and liabilities), as well as the draft charter of the reorganised joint-stock company, amongst other aspects [see Box 5.1].

The valuation process of the enterprise was carried out by the "Inventory Commission" and finalised in March 2019, following months of standstill. The valuation process proved quite challenging given the company's limited rights over certain assets, and was further complicated by the investment dispute initiated in April 2018 with Russia over assets seized in Crimea (which according to Ukrenergo's preliminary estimates - are worth around USD 1 billion) (Unian, 2018^[42]).

Finally, the process was reviewed and approved by the State Property Fund in June 2019, which allowed Ukrenergo to enter the final stage of corporatisation and receive final approval on the balance sheet and new Charter from the Ministry of Finance the following month. The valuation report has been prepared using the official "Methodology for valuation of assets of natural monopolies and business entities on adjacent markets in the field of combined production of power and heat energy" (SPF Order No.293, dated 12 March 2013) which is not IFRS compliant. Ukrenergo has announced a new valuation of the assets in

⁴¹ According to Ukrenergo representatives, the company's inventory process had followed all methodological requirements and was assessed by an independent auditor (Ukrenergo, 2018^[64]).

January 2020, using a different methodology in compliance with international standards [it is unclear however, if the process has effectively been carried out as announced).

On 29 July 2019, Ukrenergo was transformed into a private joint-stock company with 100% state-owned shares.⁴² The transformation was approved by the Ministry of Finance, who also approved the new Charter of Ukrenergo with UAH 37.2 billion of authorised capital. The company's corporatisation was finalised with the registration of shares issued to the National Securities and Stock Market Commission on 9 August 2019 (Ukrenergo, n.d.^[43]).

In accordance with Art. 108 of the Civil Code of Ukraine, all rights and obligations of the predecessor legal entity (NPC SE Ukrenergo) were transferred to the successor legal entity (NCP JSC Ukrenergo). The Ministry of Finance approved the new Charter of Ukrenergo, with the authorised capital of UAH 37.2 billion.

Transmission system ownership

According to Article 32(4) of the Electricity Market Law, one of the necessary conditions for the certification of Ukrenergo as an independent TSO is ownership of the transmission system – that is, “a system consisting of lines, auxiliary equipment, transformation and switching equipment used for the transmission of electric energy” as defined in NEURC Resolution No. 1016 of August 8, 2017. Currently, the transmission grid belongs to the state and is transferred to the company under the “right of economic management”, which limits Ukrenergo’s authority to dispose of those assets and challenges the notion of independence in their ownership. This is because under the Ukrainian law, SOEs cannot own fixed assets such as land plots (including powers grids) as those cannot be privatised. However, a transfer of the legal ownership of such state-owned assets to an independent joint-stock company, albeit 100 % state-owned, could be considered *de facto* privatisation (OECD, 2018^[5]).

Hence, the right of economic management allows SOEs to use property entrusted to them by the owner, but they are nevertheless denied the ability to dispose of it without the owner’s consent. Concretely, this means that Ukrenergo cannot perform transactions that may result in the alienation of state property, including pledging those assets as collateral or writing off illiquid or redundant assets, amongst other aspects (Boytun, 2017^[32]) [see section 4.4 for more details].

This is an ongoing issue that will eventually need to be resolved if Ukrenergo intends to obtain certification as an independent TSO as per European Energy Community requirements. Several proposals have been made to break the deadlock, including to change the Electricity Market Law or to transfer property rights into the capital of the company, while maintaining the physical assets under the ownership of the state. In a recent opinion issued on 5 February 2020, the Energy Community Secretariat stated that “either legal amendments that would strengthen the economic management right (namely allowing pledging of the assets) or legal amendments to the Electricity Market Law allowing for the Independent System Operator (ISO) model and introducing the necessary adaptations would be necessary”. At the time of writing, the government was reportedly in the process of drafting legislation to establish an ISO model⁴³ – similar to what was done in the case of the gas transmission system operator – to ensure compliance with the requirements of the Third Energy Package and to resolve the *impasse* concerning the ownership rights of

⁴² According to the Law on Limited and Additional Liability Companies, joint-stock companies are divided into public or private depending on whether their shares are subject to public offering and/or are listed on a stock exchange.

⁴³ The ISO model splits the transmission ownership from the system operation. Under the ISO model, the operator has no direct interest in the financial performance of any of the assets that incorporate or utilize the transmission network.

the transmission system, which under Ukrainian law, must remain under state-ownership.⁴⁴ The ISO model would presumably grant Ukrenergo the title for usage of the transmission assets for a pre-defined period for the purpose of transmission system operation.

5.2. Legal and regulatory framework of Ukrenergo

Ukrenergo is subject to the general laws and regulations governing state-owned enterprises in Ukraine as elaborated in Table 5.1. Since its corporatisation in July 2019, the company is also subject to general laws applying to joint-stock companies.

Table 5.1. Main laws and regulations applicable to Ukrenergo

The current legal and regulatory framework applicable to Ukrenergo includes general laws and regulations applicable to SOEs (pre-corporatisation) as well as additional requirements applicable to joint-stock companies (post-corporatisation)

Framework	Legislation	Content
Pre-corporatisation	Law on Management of State Property (No. 185-V of 21 September, 2006), and amendments	Specific law governing the management of SOEs in Ukraine, including the dividend policy of the state as an owner.
	Law on “amendments to certain legislative acts of Ukraine regarding the management of state property” (Law No. 1405-VIII of June 2016)	Introduced important corporate governance changes for SOEs in Ukraine; including increased disclosure requirements; mandatory audits and supervisory boards with a majority of independent members
	Commercial Code of Ukraine (2003)	Provides specific rules for business entities, including for SOEs.
	Electricity Market Law (Law No. 2019 VIII of 13 April, 2017)	Grants additional responsibilities to Ukrenergo under the new electricity market framework and imposes public service obligations on the company, amongst other aspects.
	Law on Accounting and Financing Reporting in Ukraine (2000) and amendments	Determines the legal basis of regulation, organisation, financial accounting and financial reporting preparation in Ukraine
Post-corporatisation	Law on Securities and Stock market (Law No. 3480-IV of 23 February, 2006)	Sets specific requirements on disclosure.
	Law on Joint-Stock Companies (2008) and amendments	Sets requirements for independent members of the supervisory board, amongst other aspects.
	Law 2210 on Amendments to Certain Legislative Acts regarding improvement of business conduct and attraction of investment by securities (2017)	Aims to improve the functioning of supervisory boards and disclosure practices in both state and privately owned JSCs.
	Electricity Market Law (Law No. 2019 VIII of 13 April, 2017)	Grants additional responsibilities to Ukrenergo under the new electricity market framework and imposes public service obligations on the company, amongst other aspects.

Source: (OECD, 2019^[1])

Beyond these laws, various institutions, including the CMU, MEEP and NEURC, have issued regulations, procedures, methodologies and other rules applicable to Ukrenergo as an individual SOE or as part of a specific sector or industry. In addition, as a large and strategically important SOE, Ukrenergo is also subject to some specific laws and regulations such as the Law “On accounting and Financial Reporting in Ukraine”, which requires public interest enterprises to comply with IFRS reporting standards, amongst other things.

⁴⁴ For the Gas TSO, a Decree of the Cabinet of Ministers No 1087-p of 15 November 2019 was passed. According to the Decree, the state is represented in its ownership function over the transmission assets by the Ministry of Finance. The economic management rights agreement between the Ministry of Finance and gas TSO constitutes the title for usage of the transmission assets for a period of 15 years for the purpose of transmission system operation, and sets out the rights and obligations of the signatories.

As previously illustrated by the case study of Naftogaz (see (OECD, 2019^[11])), the current complex web of overlapping and often contradictory legislation contributes to the absence of clarity and visibility for Ukrenergo (and other SOEs) over their respective roles and responsibilities, and creates opportunities for future political interference and corruption, as exemplified by the issue relative to the “appointment of the CEO” [discussed more broadly below].

Charter of Ukrenergo

The current Charter of Ukrenergo was approved by the Ministry of Finance, on 21 October 2019 with UAH 37.2 billion of authorised capital (approximately USD 1.49 billion).⁴⁵ It constitutes therefore the 11th version of the Charter since the company’s establishment in 1998. The Charter identifies the Ministry of Finance as the body authorised to manage corporate rights of the state in the share capital of the company (through the powers of the General meeting).

The powers and responsibilities of the Supervisory Board and Management board are elaborated further in two different sets of corporate regulations, which are presumably established by the general meeting, namely (1) the Bylaw on the Supervisory Board; and (2) the Bylaw on the Management Board. [The competences of these bodies are listed in section 5.4 and Annex A].

It is worth noting that changes introduced to the governance structure of Ukrenergo following the introduction of the Supervisory Board in November 2018 and the subsequent corporatisation of the enterprise in July 2019 are still in the initial stages of implementation. Uncertainties related to practical implementation of the Charter and the role of the state as a shareholder still remain.

5.3. Ukrenergo’s governing bodies and key operating divisions

According to paragraph 9.1 of Ukrenergo’s Charter, the company’s governing bodies include the : (1) General Meeting; (2) Supervisory Board; and (3) Management Board. Hence, following its corporatisation, the company adopted a two-tier board system as is commonly the case for joint-stock companies in Ukraine. The previous version of the Charter of Ukrenergo (adopted in February 2019 under its previous corporate form) referred to the Supervisory Board and the Chief Executive Officer (CEO) as its governing bodies.

The general meeting

The General Meeting is the highest decision-making body of the company. The Charter provides for the holding of one annual general meeting, as well as the possibility for extraordinary meetings to be convened by the Supervisory Board (SB) at the request of the shareholder; its own initiative or at the request of the Management Board. The powers and functions of the General Meeting are to be exercised by the sole shareholder of the company (i.e. the state represented by the Ministry of Finance for Ukraine). Its exclusive competences include basic shareholder rights as per the SOE Guidelines, namely to (1) participate and vote in shareholder meetings; (2) elect and remove members of the Supervisory Board; (3) approve extraordinary transactions and (4) vote on dividend distribution and enterprise dissolution, amongst other aspects [a comprehensive list is provided in Annex A].

⁴⁵ According to Ukrenergo, as of July 29, 2019 total value of the company’s assets amounted to UAH 128,1 billion.

The supervisory board

According to the Charter of Ukrenergo, the Supervisory Board is a collegial body that represents the interests of the State and is responsible for the general oversight of the enterprise. Its composition, powers and duties are defined in the company's Charter and the Rules of Procedure of the Supervisory Board. As mentioned, Ukrenergo established a first-ever Supervisory Board in October 2018, as a first step towards the corporatisation of the enterprise. Prior to this, the company was governed by the Ministry of Energy as the shareholder ministry and the Acting CEO of the company.⁴⁶

Following its establishment, the Supervisory Board took over part of the supervisory functions which were then carried out by the Ministry of Energy as the ownership entity. According to the company, this has helped to put to an end to the frequent changes in management (with replacement of CEOs subject to political cycles)⁴⁷ and to reduce potential political intervention in the day-to-day management of the company.

Composition and independence of the Supervisory Board

The Supervisory Board of Ukrenergo is composed of seven members, three of which are state representatives and four of which are considered independent as per the criteria and requirements established by Ukrainian law [Box 5.3].⁴⁸ This is in line with the requirements established by CMU Resolution No. 142 on the "Management of State-owned Enterprises",⁴⁹ which stipulates that the size of SOE boards and committees in Ukraine may "not be less than five and not more than 11 persons". It is also in line with Law No. 1405-VIII, which requires fully and majority-owned SOEs to have a majority of independent directors on their boards [Table 5.2].

Members of the Supervisory Board are elected for a term not exceeding three years, as per the national legislation. Independent board members are elected through a competitive process [described in section 6.5 below] while state representatives are appointed through a decision issued by the shareholder ministry, though formal appointment is made through the MDETA nomination committee as recently amended as per amendments to CMU Resolution 777 (Resolution 927). According to the Law "On Preventing Corruption", supervisory board members and other SOE officials can be considered "public officials".⁵⁰

The composition of the Supervisory Board is approved by the General Meeting (i.e. the shareholding ministry). Although there is no legal requirement set out as part of the CMU-led nomination procedures on board diversity, the Charter of the company states that the Supervisory Board "shall be formed in compliance with the principle of diversity [...]". Members of the Supervisory Board have different

⁴⁶ Vsevolod Kovalchuk exercised this function from 2015 until his resignation on 26 February 2020 without ever being formally appointed. Former First Deputy Chairman, Volodymyr Kudritsky will assume his functions until completion of the CEO recruitment procedure.

⁴⁷ The company has reportedly witnessed the replacement of eight CEOs in the previous 10 years (Boytsun, 2017_[32]).

⁴⁸ Note that three new state representatives were appointed in February 2020, while the independent board members remain in place until the end of their tenure to ensure continuity on the board.

⁴⁹ The full name is "Resolution No. 142 on some issues related to the management of state unitary enterprises and companies, in the authorized capital of which more than 50% of shares belong to the state."

⁵⁰ The Law "On Preventing Corruption" says that "for the purposes of this Law, officials of legal entities of public law, persons being members of SBs of a state bank, SOE or state organisation aiming at receiving revenue, with 50%+ shares pertaining to the State, are considered as equals to persons performing functions of State or local self-government" (point a) subpar. 2, par. 1, Art. 3). Other employees of Ukrenergo (including executive officers and independent members of the supervisory board) are not considered government officials or civil servants.

nationalities as well as different professional and qualification characteristics that would appear to meet the needs of the board (especially independent members). Perhaps to reassure creditors, being a foreign national involved in the broader international community seems to have been an informal criterion for joining the board as an independent director. To date no woman has been appointed to the supervisory board. There is also no employee representative in Ukrenergo's Supervisory Board, although there is no such requirement in the Ukrainian legislation, nor is that a common practice in Ukrainian companies.

Table 5.2. Composition of the Supervisory Board of Ukrenergo (as of March 2020)

Independent		State representatives	
Sevki Acuner (Chair)	Former Director of the European Bank for Reconstruction and Development in Ukraine, with a track record in the international arena and as a member of the supervisory boards of large companies in France, Germany, Lithuania, Poland, Russia, Belarus, Azerbaijan, Turkey and Ukraine	Lev Pidlisetskyi (as of 26 February 2020)	Member of Parliament of Ukraine of the 8th convocation, from 2014 to 2019; Member of the Verkhovna Rada Committee on Fuel and Energy Complex, Nuclear Policy and Nuclear Safety; Chairman of the Subcommittee on Electricity and Energy Transport
Peder Andreassen	President and CEO of the Danish national transmission system operator for electricity and natural gas Energinet, with 13 years of experience in the sector and in particular of the European Network of Transmission System Operators for Electricity which he presides since 2015.	Yurii Heletyi (as of 26 February 2020)	Deputy Minister of Finance for European Integration. From 2003 to 2015 he worked in various positions at the National Bank of Ukraine, and subsequently held the position of Director of the Financial Policy Department of the Ministry of Finance.
Olivier Appert	General Delegate at the French Academy of Technologies ("Académie des technologies") and former board member of the French utility company Électricité de France (EDF). He has over 40 years' experience in the energy sector of France - from control and oversight at the French Alternative Energies and Atomic Energy Commission to strategic planning and operational management of commercial companies (Elf Aquitaine, Total, Technip and Électricité de France).	Yurii Tokarevskyi (as of 26 February 2020)	Advisor to the Minister of Finance. Previously, worked as Advisor to the Prime Minister and Advisor to the Embassy of Ukraine in Austria.
Luigi de Francisci	Founder and CEO of DFC Economics (Italy) with over 20 years of managerial experience in electric power engineering, in particular in the Italian electricity transmission grid operator TERN S.p.A. and one of the largest energy company in Italy, Enel S.p.A. In addition, he is a member of the Council and General Assembly of the European Network of Transmission System Operators (ENTSO-E)		

Source: (Ukrenergo, 2018_[36]); CMU Order No. 156-p dated 26 February 2020.

Members of the Supervisory Board exercise their rights and obligations on the basis of civil contracts concluded (individually) with the Chairman of the Management Board on behalf of the company. The civil contract stipulates mutual rights and obligations, terms and conditions for remuneration, early termination of the contract and may include liability insurance coverage, amongst other aspects. Board members are required to "act in the company's interest" as stipulated in the Ukrainian legislation, although in general the concept of "fiduciary duty" is still rather new and underdeveloped in Ukraine [Box 5.2] (OECD, 2019_[11]).

Box 5.2. Supervisory Board member's liabilities

According to the Law on Joint-Stock Companies, Supervisory Board members are individually liable for the company's losses arising from their improper action or inaction; and jointly liable if losses are caused by a number of persons. The Supervisory Board members are generally subject to civil or criminal liability as established by the law.

In addition to this, according to the recent changes in Ukrainian law a shareholder with at least 10% of shares is entitled to file a derivative suit on behalf of a company against its officers (e.g. the CEO or Supervisory Board members, who also fall into the definition of the officers of a joint-stock company) claiming damage caused by their actions or inactions, subject to specific requirements. However, there is no established court practice of implementation of these provisions engaging members of Supervisory Boards in particular. In some cases, supervisory board members can be insured according to director liability insurance, which is applied by fully or majority-owned SOEs on a voluntary basis (CMU Resolution No.535).

The law and regulations provide for the following duties of the Supervisory Board members and they are generally identical to those applicable in the private sector:

- Duty of loyalty (to act in the interest of the Company, in good faith and reasonably);
- Duty to act within powers (to comply with the law and the charter and other internal regulations of the company);
- Duty to provide information to shareholders, revision commission and auditors;
- Duty to declare conflict of interests and reimburse damages;
- Anti-corruption duties.

Note. The Law on Joint-Stock Companies does not expressly impose duties of care or prudence upon supervisory board members. However, the Corporate Governance Principles and the Limited Liability Company Law provide that board members of JSCs and LLCs must act "in good faith, reasonably, and in the best interests of the company".

Source: (OECD, 2019^[1])

All board members (including state representatives) are expected to decide at their own discretion on any matters of the agenda, with a few exceptions provided by the Ukrainian law. The government has reportedly given instructions directly to SOE managers or board members in the past, however this practice has reportedly changed with the enactment of Law 1405 which abolished this practice, except where a vote concerns a transaction that exceeds in value 25% of the SOEs' assets.

The Chairman and Deputy Chairman are elected from among the members of the Supervisory Board, by a simple majority of votes. According to the company's Charter, he or she may not be "a founder, shareholder, chairman and/or member of the supervisory board of a business entity engaged in the same or adjacent market as Ukrenergo or exercising a direct or indirect control over a business entity engaged in the generation and/or supply of electricity [...]" (Charter of Ukrenergo, 2019). The current chair is an independent member.

Box 5.3. Definition of “independence” for Supervisory Board members

Requirements for independence - as established in the Law on the Management of State Property and the Law on Joint-Stock Companies – include:

- Not having been (in the past five years) a founder, shareholder, manager, (Supervisory) Board member, employee or representative of Ukrenergo or another economic entity operating on the same or adjacent markets for the production, transmission, distribution or supply of electricity in Ukraine; and not having been an official or a board member of the transmission system operator in neighbouring states of Ukraine, or another economic entity engaged in the production and/or supply of natural gas;
- Not having been (in the past two years) an affiliated person of Ukrenergo or another economic entity operating the electricity power system of Ukraine and/or involved in the production, transmission, distribution or supply of electricity in Ukraine, or of another economic entity engaged in natural gas production and/or supply, its shareholder or its subsidiary [...];
- Not having received (in the past five years) any income other than the remuneration for the performance of the function of Supervisory Board member of Ukrenergo, from another economic entity operating the electricity power system of Ukraine, its subsidiary, branch, representation or other separated subdivision;
- Not having been an auditor or having participated in the audit of Ukrenergo or of another economic entity operating the electricity power system of Ukraine (or any of its subsidiary or branch) for the previous three years preceding his/her appointment (election) to the Supervisory Board
- Not being or having been a public official or state representative.

In addition, independent board members are also required to meet the following criteria as per CMU Resolution No. 142: (1) enjoy full civil capacity; (2) have higher educational and professional knowledge and skills, suitable to the position and activity of the company; (3) conform in terms of honesty, impartiality and objectivity; (4) not hold an elected office or be a public official at the national or local level; (5) not have a criminal record.

Despite this, it is worth noting that the appointment of former EBRD Director as an independent board member and Chair of Ukrenergo has raised concerns of potential conflicts of interest. The Chair was appointed to the board of Oschad Bank (which was subsequently rejected by the NBU, see Box 5.1), and holds the Chairmanship of the Supervisory Board of Ukrzaliznytsia, the SOE that operates the majority of the public railway transport in Ukraine (and which also supplies electricity via a subsidiary). Moreover, ERBD sits on MDETA’s Appointments Committee and has an “advisory vote”. This committee is in charge of the competitive selection and appointment of independent supervisory board members and CEOs of important SOEs (see Box 6.1 for more information). As noted earlier, Ukrenergo is also beneficiary of loan programmes provided by ERBD.

Mandate of the Supervisory Board

According to the new Charter of Ukrenergo, the exclusive competences of the Supervisory Board include, but are not limited to: (1) agreeing on the draft strategic plan, development plan and annual financial plan of the company; (2) appointing and dismissing members of the Management Board (including the

Chairman); (3) approving certain extraordinary transactions⁵¹ and (4) determining the structure and operation of the company's internal risk management and control systems, amongst other aspects.

Table 5.3. Responsibilities of Ukrenergo's governing bodies

	Shareholding Ministry	Supervisory Board	Management Board
Approve enterprise strategy	Yes	(Yes)	No
Appoint and dismiss the CEO	(No)	(Yes)	No
Approve certain transactions beyond a certain threshold	Yes	Yes	No

Note: () indicate potential issues of applicability due to conflicting laws and regulations.

Source: based on information provided by Ukrenergo and the Ministry of Finance, 2019.

It is important to note that, while the Charter of Ukrenergo empowers the Supervisory Board to appoint and dismiss key executives of the company and to decide on their remuneration, it is unclear whether, under the applicable laws and by-laws of the company, the Supervisory Board is actually authorised to appoint independently the CEO of the company after its transformation into a private joint-stock company, due to the existence of conflicting provisions on this matter (Table 5.3). Indeed, according to Law No. 1405 on "amendments to certain legislative acts of Ukraine regarding the management of state property" (hereafter "Law No. 1405"), the appointment of the CEO of a state unitary enterprise falls within the exclusive competence of its supervisory board. However, for large or strategically important SOEs, the Resolution of the Cabinet of Ministers No. 777 (of 3 September, 2008 and amendments) sets a distinct procedure whereby the appointment of the CEO should be based on a competitive selection procedure performed by an Appointments Committee operating under the MDETA (previously under the CMU). While Law 1405 should supersede CMU Resolution No. 777, the conflicting nature of these provisions implies a risk that the decision of the Supervisory Board to appoint the CEO may be challenged on the basis of its inconsistency with other legal provisions⁵². Indeed, at the time of writing, the assessment team was informed through open sources, further confirmed by Ukrenergo, that the process for the competitive selection of the CEO by the Supervisory Board had been suspended by a decision of the Cabinet of Ministers (dated 12 February 2020), calling for the urgent appointment of the CEO of Ukrenergo as per the requirements of Resolution 777. According to the government, the Supervisory Board of Ukrenergo will recover its power to appoint the CEO once all its members will be appointed⁵³. In the meantime (and based on the provisions of Resolution 777), the Supervisory Board has nominated an Acting CEO which is subject to approval by the CMU (or ownership entity). On 26 February 2020, the remaining supervisory board seats were filled and the board announced its intention to resume the competitive selection process to recruit a CEO. However, due to the Covid-19 global pandemic that process has been reportedly subject to further delays.

Furthermore, while the Supervisory Board of Ukrenergo is empowered to perform important functions, it is not granted full responsibility and autonomy to define strategies for the company, as is commonly the case in Ukrainian SOEs (Table 5.3). In fact, most of Ukrenergo's key documents such as the company's draft strategy, investment plan and development plan are still subject to approval from the shareholding ministry, the CMU and/or other government bodies, which in practice leaves room for political intervention.

⁵¹ Transactions with market value between 10% and 25% of the company's total assets are to be approved by the Supervisory Board. Those exceeding 25% of the company's total assets need approval from the General Meeting (i.e. the shareholding ministry).

⁵² Note that CMU Resolution No. 777 has been amended on 30 January 2020, which may bring in some changes to the procedure described above.

⁵³ At the time of writing, the Ukrainian government had just appointed three new state representatives to the board.

According to the 2018 report of Ukrenergo's Supervisory Board, three meetings were held in 2018, one of which was an extraordinary meeting initiated by the Chairman of the Supervisory Board. Important decisions were taken with regards to the corporatisation of the company and its preparation for the launch of the new wholesale electricity market (ex. implementation of the necessary software); however, there appear to have been only limited discussions on the operational/strategic management of the company. More recently, the board held three meetings since the company's corporatisation in August 2019. Decisions are adopted by simple majority, with each member having one vote (except for members that could be affiliated to a related-party transaction who must recuse themselves), and the Chairman a casting vote.

According to feedback from the Board and interviews with the Ministry of Finance, communication between the Supervisory Board and the Ministry of Finance, as the new shareholder, has been very limited and rather one-sided. The Ministry purports that it needs to become familiarised with the company and adjust to its new role as shareholder, and admits that for the time being the communication has been limited to the management board rather than the Supervisory Board. Nevertheless, the company's management considers the relationship with its shareholder in the first few months of its transfer to the Ministry of Finance to be positive and constructive (notwithstanding the long and cumbersome approval processes, which are usually imposed on SOEs in Ukraine).

Supervisory Board Committees

The Supervisory Board of Ukrenergo established four committees on its first meeting of 2 November 2018 (Tables 5.4 and 5.5): an Audit Committee, a Committee for Appointments and Remuneration (in line with the requirements of the Law On Joint-Stock Companies); a Committee for Investments and Strategy; as well as a Corporate Governance and Regulatory Committee. The latter ceased to exist following the corporatisation of Ukrenergo in August 2019. According to the Charter of Ukrenergo, the SB has the right to independently establish (by simple majority) other committees, if it so wishes.

Table 5.4. Current composition of Ukrenergo's Supervisory Board Committees

As of February 2019

Position	Name	Audit Committee	Committee for Appointments and Remuneration	Committee for Investments and Strategy
Independent	Sevki Acuner	X	X	
Independent	Peder Andreasen	X*		X
Independent	Olivier Appert		X*	X
Independent	Luigi de Francisci		X	X*
State representative*		X	X	
Member of the management board	Maksym Yurkov ¹	X	X	X

Note: (*) is used to identify the Chairman of these committees. Note that all three state representatives to the supervisory board were named on 26 February 2020 and thus board committee nominations have not yet been updated.

Maksym Yurkov has been designated acting corporate secretary in each of these committees.

Source: Ukrenergo, 2019.

These committees are made up of members of the Supervisory Board and consist of at least three members. All of them are required to be composed of a majority of independent directors, and chaired by an independent director (Charter of Ukrenergo, 2019).

The powers of the Supervisory Board committees are determined in accordance with the laws of Ukraine, the Rules of Procedure of the Supervisory Board and the regulations on relevant committees to be approved by the Supervisory Board according to the company's Charter [see Annex A for more information on the responsibilities of the board].

All three committees are required to submit to the Supervisory Board an annual report on their activities including information on the composition, number of meetings and main activities of the committee. They may also provide regular reports or information on specific issues related to their activities upon request of the Supervisory Board.

Table 5.5. Board committees' responsibilities (as of November 2019)

	Number of members	Number of meetings ¹	Main responsibilities
Audit committee*	4	3	Assists the board in fulfilling its oversight responsibilities relating to the effectiveness of the company's internal control over financial reporting, and the company's compliance with legal and regulatory requirements
Committee for Appointments and Remuneration*	5	3	Provides recommendations to the Board on the nomination of board members and key management officers, and on setting remuneration policies and the compensation paid to the company's highest officers
Committee for Investments and Strategy*	4	3	Prepares the draft investment plans, 10-year development plans and strategic plans of the company; and provides recommendations to the Board on issues related to strategy and investments

Note: * Indicates mandatory requirement to be chaired by an independent director.

¹ Number of meetings following corporatisation.

Source: Charter of Ukrenergo, 2019.

Box 5.4. Resolution No. 141 on SOE board remuneration

CMU Resolution No. 141 was adopted on 5 February 2020. It introduces remuneration caps for executive managers and supervisory board members in SOEs. Main features of the resolution include:

- Monthly salary for CEOs shall not exceed 1.25 million UAH;*
- Remuneration of Supervisory Board members will relate to the average salary in an industry (as of previous quarter). Salaries shall not exceed the amount of five average salaries if a company's revenue per year is below 1 bln UAH, or 22 salaries if the revenue is 20+ bln UAH;
- Supervisory Board Members are not entitled to a 10% increase of their salaries for their participation in the SB committees, although the Chair of the Supervisory Board will get 20% increase to his/her salary for performing the function of a Chair.

Note: * The CMU has advised state bodies and Supervisory Boards to review contracts with CEOs signed before this Resolution came into force.

Supervisory Board remuneration and evaluation

In accordance with the legislation of Ukraine, SOE board members are entitled to a remuneration and expense reimbursement connected to the performance of their duties. The remuneration of key executives and board members is decided by the Ministry of Finance based on a procedure established by the Cabinet of Ministers of Ukraine (UkrenergO questionnaire responses, 2019), which considers aspects such as the revenue of the company and number of staff employed, amongst other things. In February 2020, the Ukrainian Government adopted CMU Resolution No. 141, which introduces caps on remunerations for board and management members (Box 5.4). According to the 2018 Report of the Supervisory Board of UkrenergO, the amount of annual remuneration for independent board members was established in the civil contract signed between them and the ownership entity (the Ministry of Energy and Coal Industry at the time) through Order of the Ministry of Energy No. 533 (of 25 October 2018). State representatives are equally remunerated as independent board members but are subject to certain restrictions as per the Law on State Service (e.g. impossibility to earn additional revenue or own shares of the company).

While the exact remuneration level of UkrenergO's board members is currently unavailable, they are reportedly below market-level. Furthermore, such remunerations are, according to Article 45(1) of the Law No. 1700-VII "on Prevention of Corruption" of 14 October 2014: "subject to public law and must therefore, on an annual basis and by the 1st day of April, submit assets declarations to the National Agency for Prevention of Corruption (NACP), declaring their income not only in Ukraine but also abroad.⁵⁴ This requirement has caused significant controversy as it applies to foreign nationals as well. The international community, including G7 Ambassadors, has urged the Ukrainian Parliament to cancel the requirement due to its apparent violation of international commitments and laws, as well as the risk that it could deter Ukraine from the recruitment and retention of qualified international supervisory board members. While currently the requirement remains valid and applies to UkrenergO board members, it will reportedly be removed for foreign officials starting January 2020 (OECD, 2019_[1]).

The Management Board and other key management

The Management Board

With the transformation of UkrenergO into a joint-stock company, the company established a management board the members of which were appointed by the Supervisory Board on 29 August 2019.

According to the Charter of UkrenergO, the Management Board is a collegial body in charge of carrying out current operational activities of the company. It is accountable to the Supervisory Board and the General Meeting of the Company and shall be composed of no less than three and no more than five members including the Chairman of the Management Board, in accordance with the procedure provided for in the Charter. Currently, the Management Board is constituted of 5 members, each of which heads a certain number of directorates and units within the company. Interestingly, the Management Board does not include the head of Human Resources nor the head of the Finance departments, which are currently subordinated under the responsibilities of the Acting Chairman and First Deputy Chairman, respectively. (Table 5.6)

⁵⁴ In 2017, 3917 employees of UkrenergO submitted asset declarations to the NACP (approx. 98.1% of employees who were obliged to do so) including all of UkrenergO's independent board members. According to UkrenergO's 2018 non-financial report, the main reasons for late submission or failure to submit declarations include "lost passwords to the EDS, expiration of their term and late change of the electronic address from the mail servers hosted by the Russian Federation."

Table 5.6. Current composition of the Management Board of Ukrenergo.

		Description	Supervision over:
Volodymyr Kudritskyi (previously Vsevolod Kovalchuk)	Acting Chairman (as of 26 February 2020)	Head of Ukrenergo, responsible for the entire operational activity, development strategy, investments and international cooperation	<ul style="list-style-type: none"> • Communications & International Cooperation Department; • Directorate for Human Resources; • Labour Protection & Industrial Safety Department; • Security Department; • Central Body for Special Telecommunications; • Information Security & Technical Protection Unit; • Compliance Officer
Volodymyr Kudritskyi	First Deputy Chairman	Responsible for project management, implementation of investment policy and relations with international creditors	<ul style="list-style-type: none"> • Finance Directorate; • Directorate for Grid Operation and Development; • Directorate for Investments; • Branch for Construction and Repair; • International procurement; • Department of Efficiency Management; • Strategic Planning Unit; • ENTSO-E Integration Office
Andriy Nemirovskiy	Deputy Chairman	Mainly responsible for development and preparation of the company's regulatory documents for the implementation of the new electricity market model and integration to ENTSO-E.	<ul style="list-style-type: none"> • Directorate for IT; • Directorate for Market Operations; • Directorate for Commercial Metering; • Department for Interaction with Market Participants; • IPS Operating Directorate
Maryna Bezrukova	Member	Responsible for development and implementation of the procurement strategy; and manages contract work, logistics and property sales.	<ul style="list-style-type: none"> • Directorate for Supply Chain Management; • Ukrenergoservice - Branch for Supply and Service Provision; • Registry
Maksym Yurkov	Member	Responsible for the management of the legal department	<ul style="list-style-type: none"> • Directorate for Legal and & Regulatory Affairs; • Commissioner for Government Relations; • Branches on Temporarily uncontrolled and occupied Territories; • Department for Land Relations

Source: Ukrenergo, 2019.

According to the Charter, any individual with full civil capacity (except members of the SB) can be a member of the Management Board of the company. However, the Chairman of the Management Board cannot be “a founder, shareholder, manager and/or member of the Supervisory Board of the company or any other entity conducting activities in the same or adjacent markets of electricity generation, transmission, distribution and supply in Ukraine”. The Charter also stipulates that the Chairman and members of the Management Board are required “not to disclose restricted information about their activities and should not use their official position and information of the company to their gain, or to allow their use by third parties for their gain”. No such obligation exists for members of the Supervisory Board.

Meetings of the Management Board are convened at the request of any of its members (or at the request of the Supervisory Board) and are considered duly constituted if attended by a majority of its members. Management Board members are required to participate in person or through remote communication means, which allow all participants to hear each other and communicate with each other. Each member of the Management Board shall have one vote. In the event of equality of votes, the Chairman of the Management Board shall have a casting vote.

Management Board mandate

According to the Charter, the Management Board is empowered to decide on all matters related to the activities of the company with the exception of those falling within the exclusive competence of the General Meeting and the Supervisory Board. Powers and competences of the Management Board include routine managerial tasks and transactions such as (1) disposing of the assets and funds of the company; 2) preparing key strategic documents of the company, including the financial and development plans of the company; and 3) providing recommendations to the Supervisory Board on issues related to substantial transactions, annual dividends and human resources management, amongst other aspects.

Before the establishment of the Management Board, many of the operational issues which are now within the responsibility of the Management Board were, in fact, entrusted to the Supervisory Board.⁵⁵ The establishment of a two-tiered board introduces a clearer distinction between supervisory and management functions within the company.

Chairman of the Management Board

Before the approval of the July 2019 Charter and the corporatisation of Ukrenergo into a Joint-Stock Company, the CEO was the sole executive body of the company and reported to the Supervisory Board and the ownership entity. From 2015 to July 2019, this role was performed by acting CEO Vsevolod Kovalchuk. With the corporatisation of the company, Mr. Kovalchuk became the Acting Chairman of the Management Board of Ukrenergo (until his resignation on 26 February 2020). An open competition for the recruitment of the CEO, using an executive search company was launched in January 2020, with plans for the candidate to be shortlisted by the Supervisory Board in mid-February. The process was, however, recently suspended by a decision of the Cabinet of Ministers (dated 12 February 2020, Minutes No.9), calling for the suspension of the competitive selection for the position of CEO until all the Supervisory Board seats had been filled. The Decision further called for the urgent appointment of an Acting CEO according procedures enumerated in CMU Resolution 777 (it should be noted that according to this Resolution, acting CEOs can be named by the Cabinet of Ministers of Ukraine or the ownership ministry). Hence, while the company's Charter clearly stipulates that "the Chairman of the Management Board is appointed and dismissed by the Supervisory Board (while other members are appointed and dismissed by the Supervisory Board, upon submission of the Chairman of the Board)", the Supervisory Board cannot currently fully exercise this power due to inconsistencies in applicable legal frameworks. Unfortunately, the recruitment process has been further setback due to additional delays resulting from the Covid-19 pandemic. The CEO appointment process is a key issue to monitor going forward as there have been some challenges with shareholder intervention in CEO appointment in the past.

A contract is signed between the Chairman of the Supervisory Board (on behalf of the company) and individual members of the Management Board. The contract specifies the employment period, rights, duties and responsibilities of the executive, remuneration and other employment conditions agreed upon by the parties. The powers of Management Board members can be terminated by the Supervisory Board before the end of their contracts in case of (1) adoption of a resolution by the Chairman of the Management Board to terminate their powers; (2) upon personal request of the Management Board member; (3) impossibility to fulfil their obligations; or (4) entry into force of a court verdict or a judgment convicting the person.

⁵⁵ A reason for this is the poor drafting language of Law 1405, which calls for the establishment of supervisory boards in SOEs meeting certain thresholds but does not clearly distinguish the role and responsibilities of the Supervisory Board vis-à-vis the Management Board.

The Chairman of the Management Board reports to the Supervisory Board and the General Meeting. He/she is responsible for the entire operational activity, development strategy, investments and international cooperation and has the following competences as stipulated in the Charter of the company (non-exhaustive list):

- Act without a power of attorney on behalf of the company, and represent its interests when interacting with government agencies; in particular, the National Energy and Utilities Regulatory Commission and local self-government authorities, as well as with other organisations and legal entities and individuals in Ukraine and abroad, including with foreign transmission system operators ensuring the international representation of the company;
- Enter into transactions and agreements (contracts, etc.) on behalf of the company (subject to the restrictions established by the Charter);
- Approve the staffing of the company – deciding on the appointment and dismissal of the employees, their remuneration, as well as on the system of incentives and sanctions applicable to them;
- Submit proposals to the Supervisory Board on appointment and dismissal of members of the Management Board as well as on the terms and conditions of their contracts.

In addition, according to the Charter of Ukrenergo, the Chairman of the Management Board bears personal responsibility for compliance with applicable legislation, the implementation of the Anti-Corruption Programme of the company, as well as for the preparation and implementation of financial plans. On the Anti-Corruption Programme, it should be noted that according to best practices it is non-standard to have reporting lines directly to the CEO as opposed to the Supervisory Board or a relevant Board committee that is independent of Management.

According to the Ukrainian law, CEOs of SOEs are subject to disciplinary liability (in line with the Labour Code and internal labour regulations); pecuniary liability (i.e. compensate the company for the damage incurred); civil liability (i.e. property sanctions); administrative liability (when committing an administrative offence); and criminal liability in line with the requirements established in the Criminal Code of Ukraine.

Other bodies

The Corporate Secretary (CS): The CS is, according to the Charter of Ukrenergo, “an individual that coordinates the work of the managerial bodies of the company and the shareholder, ensuring the exchange of information between them. The Supervisory Board is empowered to elect and dismiss the Corporate Secretary, upon the proposal of the Chairman of the Supervisory Board. He/she shall not be a member of the Supervisory Board and shall not have a voting right at its meetings. Currently the Corporate Secretary is the Head of the Legal Department.

The Labour Collective: labour and social relations of the managerial bodies are governed by collective agreements with a labour collective which comprises one or several elective bodies of the trade union of the company. It exercises its powers through the general meeting (conference) and is involved in (1) entering into a collective agreement on behalf of the labour collective; (2) agreeing on social and other benefits to employees upon proposal of the Management Board of the company; (3) participating in the development of internal regulations of the company; etc.

5.4. Financial reporting and controls

Transparency and disclosure requirements

Information disclosure requirements for SOEs are set out in Art. 73 and 90 of the Commercial Code of Ukraine, the Law on Accounting and Financial Reporting in Ukraine, the Law on Securities and the Stock Market and CMU Resolution No.1067 on the Procedure for Disclosing Information on SOEs (of 11/09/2016), which all require SOEs to disclose information (around the clock and free of charge) about their activities on their official webpage or on the official website of the ownership entity – subject to the deadlines and procedures established by the CMU. The information subject to mandatory disclosure for fully-owned SOEs includes (but is not limited to):

- Targets of the company and their achievement status;
- Quarterly and annual reports of the enterprise for the last 3 years, including (if any) expenditures for the achievement of non-commercial state policy objectives and their funding sources;
- The auditor’s opinion on the annual reports of the company for the last 3 years (when carried out in compliance with the law or a decision of the SB or ownership entity);
- Effective version of the Charter of the company, as well as its previous versions;
- Background information on the CEO and members of the Supervisory Board of the company (subject to statutory requirements as to personal data protection); including the selection process and independent status;
- Annual reports from the Supervisory Board and the CEO of the company;
- Composition, selection process and remuneration of the CEO and members of the Supervisory Board, including their effective (or eligible) remuneration packages and additional benefits received when performing their official duties or after retirement;
- Decisions of the ownership entity, including information on the expected risk factors which may influence operations of the company and the related risk management measures;
- Details about the negotiations involving the company which are subject to disclosure in accordance with the Law on the Transparency of the Use of Public Funds
- Details about the operations and liabilities of the company with regards to the state and/or local budget; state and/or local institutions, as well as other enterprises and organisations including contractual obligations (both financial and non-financial) which are implied by the public-private partnerships.

Currently, the following documents are published on Ukrenergo’s official website: (1) annual financial plans (since 2016); (2) quarterly and annual financial statements (since 2016); (3) annual auditor’s reports (since 2012 and in English); (4) quarterly tariff rate (since 2015); (5) annual technical reports; and (6) annual reports since 2010. Since 2018, the company has published a non-financial report on sustainable development in accordance with the standards of the Global Reporting Initiative (GRI). The latest version - titled “10 steps to Europe” - was released in May 2019 and identifies 10 key strategic goals for the company. It also features information about the company’s performance in key areas, the strategic development of the enterprise as well as information on procurement, environmental impact, energy saving, personnel development and anti-corruption activities.

The company also displays information on key management (name and position) but does not disclose information on the remuneration of board members and key executives. In fact, remuneration figures in the so-called “List of details defined as trade secret and confidential information” according to Order No. 4

of 9 January, 2018 which considers “in-house documents of the company” (i.e. orders, directives, regulations, instructions and other details about employee wages) as confidential company information.

Additional information on Ukrenergo can also be found on the website of the CMU and on Prozvit, an online SOE analytics portal which was introduced in Ukraine in July 2019. The platform contains financial indicators for more than 3,500 (operating) SOEs that are under the control of central executive authorities (up to 2016). It was developed by the Ministry for Development of Economy, Trade and Agriculture, in partnership with the electronic auction portal Prozorro.sales, Transparency International Ukraine and the German Society for International Cooperation (Deutsche Gesellschaft für Internationale Zusammenarbeit -GIZ). The new platform represents a step forward in terms of public access to information on the Ukrainian SOE portfolio in both English and Ukrainian. The website offers search functions by ownership entity, industry, individual SOE and/or other criteria and can also provide information aggregated by sector.

Until recently, the Ministry for Development of Economy and Trade was also publishing an aggregate report on SOEs gathering information on Ukraine’s 100 largest SOEs and disclosing their results on an annual basis, however the Ministry has decided to cease its publication due to the entry into function of the Prozvit database, which features individual and aggregate data for SOEs.

Table 5.7. Reporting requirements of Ukrenergo

Institution	Documents
Ministry of Finance	<ul style="list-style-type: none"> • Quarterly and annual financial statements • Quarterly report on the implementation of the company's financial plans indicating significant deviation from expected indicators
Ministry for Development of Economy, Trade and Agriculture	<ul style="list-style-type: none"> • Information and analytical material (based on the company's financial and business performance) for monitoring the government property management efficiency
Cabinet of Ministers of Ukraine	<ul style="list-style-type: none"> • Information on the implementation of the company's financial plan
National Energy and Utilities Regulatory Commission (NEURC)	<ul style="list-style-type: none"> • Monthly, quarterly and annual reports using the standard reporting forms as approved by NEURC Resolutions No. 1234 of 07 July 2016 and No. 1258 of 04 October 2012) • Financial statements • Information on the implementation of the tariff, investment programmes and other relevant issues
State Property Fund (SPF)	<ul style="list-style-type: none"> • Financial statements and other information where relevant
Ministry of Energy	<ul style="list-style-type: none"> • Quarterly reports on its financial and business performance (pursuant to CMU resolution No. 8 of 1 November, 2018) • Monthly results regarding production activities • Technical and economic indicators • Annual technical report on IPS
National Securities and Stock Market Commission	<ul style="list-style-type: none"> • Special and annual information on Issuer of shares.

Source: based on information provided by Ukrenergo and other stakeholders in the standard OECD questionnaire

Similar to other SOEs, Ukrenergo has a rather burdensome and heavy reporting process vis-à-vis various Ministries and other state bodies, including NEURC and the State Property Fund [Table 5.7]. [Additional reporting requirements exist towards state audit and control bodies [See section 5.4.3 below for more information].

Accounting standards and annual audited reports

As previously mentioned, Ukrenergo publishes separate annual financial statements and annual reports (to be published by 30 April in the year following the reported period), in line with the requirements of Law No. 996 “On Accounting and Financial Reporting” of 16 July 1999. Until 2019, Ukrenergo’s financial

statements were only required to be compliant with National Financial Reporting Standards. Since its corporatisation, however, Ukrenergo has been categorised as a “large company” as per the Company Law. It is now required to report financial statements in accordance with the International Financial Reporting Standards (IFRS) except where counter-mandated by other applicable Ukrainian legislation. In fact, even prior to the existence of this requirement, the company has issued IFRS compliant financial statements audited by an independent external auditor.

Accounting requirements for Ukrenergo differ from private companies in the following areas:

- Additional provisions for doubtful debts for a period exceeding one year and a half in accordance with CMU Resolution No. 1673 “On the condition of financial and budgetary discipline [...] of November 29, 2006;
- Non-recognition of non-current assets for amounts exceeding UAH 20 000 by decision of the ownership entity in accordance with CMU Resolution No. 1314 of November 8, 2007;
- Calculation and payment of a portion of net profit to the state budget in accordance (to be determined an annual basis by the Cabinet of Ministers upon submission of the Ministry of economy) in accordance with CMU Resolution No. 702 of 12 May, 2007;
- The annual financial statements of the company are subject to mandatory inspection by an independent auditor (or audit firm) in accordance with the procedure provided by the Ukrainian legislation. They also need to be approved by the CMU (as is required for companies with over UAH 15 million profits or in the case of monopoly companies).

Internal and external controls

The external state audits on public entities, including SOEs, are carried out by:

- *State Audit Service (SAS) of Ukraine*: the SAS is a central executive authority (coordinated by the Ministry of Finance and currently being reorganised), which carries out independent financial control over the efficient and legal use of public financial resources by public entities, including SOEs. The SAS performs public financial audits, monitors public procurements of these entities and conducts inspections every two years (SAS, n.d.^[44]). The latest inspection of Ukrenergo by the SAS took place in November 2017 (OECD, 2018^[5]).
- *Accounting Chamber of Ukraine*: the Accounting Chamber is a public collegial body (and Ukraine’s Supreme Audit Institution - SAI), with organisational, functional and financial independence. It provides external control over the use of public funds on behalf of the *Verkhovna Rada*, through conducting financial audits, performance audits, expert reviews and other control measures, in accordance with working plans approved at the meeting of the Accounting Chamber (EUROSAI, 2018^[45]). To ensure transparency, the Accounting Chamber provides reports on a quarterly and annual basis to the Parliament, providing conclusions and recommendations to remedy identified problems or to prevent future violations (Secretariat of the Cabinet of Ministers of Ukraine, 2015^[46]).

The internal audit function in Ukrenergo has only recently been established. Before corporatisation, there was an internal audit unit, however, it was more of a financial control department subordinated to the CEO, than a true internal audit unit. This Department was in charge of planning, organising and conducting financial audits of the company and to submit the result to the Head of the Department for Economic Security who would then evaluate and decide whether detected wrongdoings needed to be referred to law enforcement authorities (OECD, 2018^[5]).

The new internal auditor was appointed by the Supervisory Board on 27 September 2019 (№9/2019) and the board further approved the Internal Audit policy in December 2019 (№11/2019). Following approval of the policy, the Head of Internal Audit took up functions in mid-November 2019. The Head of Internal Audit

is autonomous from the management board and is appointed and dismissed by the Supervisory Board as stated in the Company Charter. The Internal Audit Policy lays out the internal audit organisation; functions of the internal audit; principles of work and cooperation with other divisions; internal audit rights, cycle and limitation. As per good practice, the internal auditor will cooperate with the external auditors and a first meeting between the two were held in December 2019 for the preparation of the 2019 financial statements. While a welcomed development, the Internal Audit function is still not yet adequately resourced to carry out its role. The Internal Auditor has yet to constitute his team within the unit, for which the effective beginning of any internal audits is scheduled for April/May 2020.

The annual financial statements and reports of the company are subject to mandatory inspection by an independent auditor (or audit firm) in accordance with the procedure provided by Law No. 996 “On Accounting and Financial Reporting”, which sets the requirements for “natural monopoly entities” to carry out audits in line with the International Standards on Auditing and the Law “On Auditing Financial Statements and Audit Activities” (No. 2258 of 12/21/2017) which sets out increased requirements for audit services that are provided to SOEs of public interest.

The company carries out two external audits - one by a Ukrainian company (AC Crowne Ukraine) using National Accounting Standards and one by an international company (Deloitte) using International Standards on Auditing. It is foreseen that financial reporting according to the National Accounting Standard will be phased out as Ukrenergo has now completed its corporatisation process.

Compliance, anti-corruption and integrity policies

As part of its corporate governance reform – and in line with ENTSO-E requirements - Ukrenergo established a Compliance Office in line with European standards, and hired a Chief Compliance Officer (CCO) in October 2018, on the basis of a competitive selection process prepared and carried out by an international consultancy firm. The CCO is a lead manager, reporting directly to the CEO/Chairman of the Management Board.

The CCO operates within two units: (1) anti-corruption and (2) compliance, which both report to him. In February 2019, Ukrenergo’s Supervisory Board approved the company’s new Compliance Policy, which was communicated to the staff and published on the official webpage of the company. It identifies key roles, principles, procedures and standards to ensure compliance with anti-corruption commitments in the company’s day to-day operations. The policy has been developed with the assistance of Elia Grid International (a subsidiary of the Belgian TSO, Elia) and a local subsidiary of KPMG (Ukrenergo, 2018^[36]).

The company has also adopted a compliance roadmap which sets out a list of different measures to be introduced by the company in 2019. Those include:

- *Whistleblower hotline.* The company introduced an independent external provider to administer an anonymous hotline. The specialised company will receive phone calls, emails and reports on Ukrenergo’s ethics and compliance violations. Ukrenergo has prepared a communication campaign for its personnel to support the roll out of the hotline. The new system provides for a website where the information is centralised into a database (to ensure anonymity) as well as a call centre. Complaints can be made on different issues including ethics and environmental aspects;
- *New Code of Ethics:* the company has a “Code of Corporate Culture” since 2015, which regulates the activity of Ukrenergo’s employees inside the company, as well as their interaction with business partners, customers, consumers and suppliers. A new version of the Code of Conduct (including a Code of Ethics) should be developed by June/July 2020 (initially scheduled for Q3 2019) to include Ukrenergo’s values (defined for the first time with the help of a professional HR company).

- *Ethical conduct assessment* of Ukrenergo's employees through an online (and anonymous) questionnaire in view of understanding what triggers unethical behaviour and to benchmark the level of ethical culture for future assessment of the efficiency of the company's compliance system;
- *Prevention of conflicts of interest*: Ukrenergo is required to issue a report identifying potential conflicts of interests in all four areas of the company's activities (dispatching control, transmission, commercial metering administration and settlements administration). Recent measures include providing trainings on anti-corruption practices (including through tutorials and individual interviews with employees) and providing employees with assistance and equipment to fill out the online asset declarations form. Employees of Ukrenergo are also required to provide information regarding closely related persons working in the company and potential conflicts of interest. The anticorruption programme has reportedly helped reduce the number of detected cases of conflicts of interest (from 22 in 2017 down to two cases in 2018) and to eliminate the number of corroborated cases of corruption in the company (Ukrenergo, 2018^[36]).

In addition, Ukrenergo has also developed a methodology for compliance risk assessment and is working on a related action plan to mitigate detected compliance risks, as well as a broader risk map (jointly with the internal audit unit) including issues such as 1) procurement; 2) functioning of the electricity market; 3) compliance and integrity culture; 4) relation with the shareholder (and issues related with the conflicting role of the Ministry of Finance as owner and its budget approval functions) and other stakeholders (e.g. Ministry of Energy, NEURC, Ministry of Economy); and, 5) governance of the company (tone from the top; information flows between divisions, etc.). The company also provided two on-line trainings in the first half of 2019 on 1) conflicts of interest and 2) anti-corruption. According to Ukrenergo's 2018 non-financial report, 5571 and 5957 employees respectively took part in those trainings.

In February 2019, the company became the first SOE to sign a Memorandum of Partnership with the All-Ukrainian Network of Integrity and Compliance (UNIC) – a network of 53 Ukrainian and international companies committed to managing their business ethically and responsibly (UNIC, n.d.^[47]). The Network (which was notably established with the support of the EBRD and the OECD) carries out independent assessment of compliance and integrity levels of UNIC members and organises workshops and other educational activities on compliance issues. It should be noted that UNIC has not yet completed its independent assessment of Ukrenergo, but plans are underway for end-2019.

The Anti-Corruption Unit is headed by the CCO since October 2018. Previously, the unit was headed by an "Anti-Corruption Commissioner" who was appointed by the Ministry of Energy in 2017. The Anti-Corruption Unit reports directly to the CCO, and exercises its powers and obligations in line with the Anti-Corruption Programme of the company and in accordance with the requirements of the Law on Prevention of Corruption.

Ukrenergo implemented an Anti-Corruption Programme in June 2018 (which was subsequently revised in July 2019). The programme was developed on the basis of the National Anti-Corruption Strategy and was devised in consultation with the company's employees, before its approval by the Ministry of Energy⁵⁶. It was developed to prevent, detect and act upon any manifestations of corruption in the company; and identifies internal corruption risks in the organisational, managerial, financial, economic, personnel and legal procedures of the enterprise while also classifying them by categories and types. It also analyses the reasons for corruption risks and proposes a set of measures to prevent and/or eliminate detected corruption risks (OECD, 2018^[5]). In order to address some of the risks identified, the company is working towards ensuring high-risk positions (such persons in senior management roles and procurement teams) are certified as "fit and proper" by the Compliance Office.

⁵⁶ The July revision of this document was approved by the Ministry of Finance as the new shareholder.

Within this framework, corruption risks were identified in public procurement, financial management and technological processes, amongst other aspects. On procurement, one of the main challenges relates to the use of the Prozorro e-platform which does not fully eliminate risks of corruption or conflict of interests. As part of their due diligence, suppliers from ProZorro must be checked according to the State Registry of Ultimate Beneficiary Owners, in addition to a third-party supplier who is called upon to conduct additional due diligence. However, considerable shortcomings have been reported in relation to the use of this registry (notably a lack of complete and/or accurate information concerning the beneficial ownership of certain companies), which Ukrenergo identifies as a potential compliance risk.

Procurement

Since January 2017, Ukrenergo conducts its purchases in accordance with the company's procurement policy and standards as laid out in the Methodology of Purchasing Goods, Works and Services, and Concluding Agreements, a document which establishes a more transparent management system for the company (Ukrenergo, 2017^[48]). Under this framework, the company designates so-called "authorised representatives" who are responsible for the company's procurement of goods, works and services.⁵⁷ The rights and duties of these authorised officers (as set out in Ukrenergo's internal Regulation on Authorised Officers), include:

- Approving annual procurement plans;
- Selecting and organising procurement procedures; ensuring equal conditions for all bidders and objective and fair selection of winners;
- Publishing information and reports on public procurements;
- Representing Ukrenergo on procurement matters during controlling actions, hearing of complaints, court hearings, etc.

All information on Ukrenergo's procurements is publicly accessible on the company's online trading platform (<http://tenders.ukrenergo.energy.gov.ua>)

Ukrenergo was one of the first companies in Ukraine to join ProZorro – a system of electronic procurement - in April 2015 when it was still a pilot system. Since April 2017, the company has used the platform ProZorro.Sale for selling state property. This electronic auction system (developed by Transparency International), has reportedly allowed the company to save on procurement practices (at the amounts of EUR 7.6 million in 2018 and EUR 4.9 million in 2017 according to Ukrenergo). It is reported that the activity of the company continues to be closely monitored by international civic organisations, such as CoST Ukraine and Transparency International Ukraine.

Furthermore, in 2018, Ukrenergo started preparing for the certification of the company's procurement operations according to the global standards for procurement and supply issued by the Chartered Institute of Purchasing & Supply (CIPS). The company is currently improving the processes and risk management system for procurement to introduce operational and economic sanctions, as well as to optimise the organisational structure of the procurement function which should lead to the company's certification later this year. To accomplish these tasks, the company created a Directorate for Supply Chain Management and introduced operational and economic sanctions for counterparties, while also improving the logistical component of procurement (Ukrenergo, 2018^[36]).

While Ukrenergo has greatly improved its procurement process, corruption risks still exist in this area, as identified by a recent assessment of Ukrenergo (Ukrenergo, 2018^[36]). Back in 2015, the company was accused of corruption after Zaporizhtransformator (a company owned by a powerful Russian

⁵⁷ The names and contact details of "authorised officers" can be found on Ukrenergo's website.

businessperson) won a significant contract to supply transformers to Ukrenergo – despite being 72.6% more expensive than those of German engineering company Siemens. The purchase was subsequently cancelled following public pressure (Kyiv Post, 2016^[49]). However, the case was reportedly not isolated and was recently brought by the Public Prosecutor’s office to the National Anti-Corruption Bureau of Ukraine (NABU) for investigation. The allegations relate to presumed conflicts of interests having taken place on a systematic basis between 2013 and 2017 (including after the introduction of the Prozorro e-procurement system) (Nashi Groshi, 2015^[50]) (Nashi Groshi, 2014^[51]). These allegations allegedly involve senior management of the company and preferential decision-making through established procurement boards in the company to select contractors/service providers with direct links to senior management.

Recent OECD research has found that state-owned enterprises – even with strong internal controls - operating in the extractives and utilities sectors are particularly prone to corruption and integrity risks due to large and often high-value nature of concessions and public procurement contracts (OECD, 2018^[52]).⁵⁸

The above-mentioned concerns further underline the need to enhance internal controls that include compliance, risk management and audit functions with an independent reporting line to the board. Furthermore, strong and responsible state ownership is essential to effectively mitigate these risks.

⁵⁸ The OECD documents that between 1999 and 2014, 57% of cases of foreign bribery sought advantages in public procurement. This proportion jumps to 78%, when considering foreign bribery cases involving SOE officials versus those that do not (49%). In other words, SOE officials were more likely to be offered or given a bribe than other public officials and overwhelmingly by actors seeking to obtain procurement contracts (OECD, 2018^[52]).

6. Ownership arrangements

6.1. Ownership arrangements of Ukrenergo

Ministry of Finance

In November 2018, the ownership of Ukrenergo was, as mentioned, officially transferred from the Ministry of Energy to the management sphere of the Ministry of Finance, to meet the requirements for the separation and independence of the transmission system operator. Indeed, the ownership function of the Ministry of Energy was conflicting with its policy-making and regulatory functions (i.e. the ministry is in charge of developing the state policy in the energy sector in addition to exercising ownership rights in SOEs involved in electricity generation), which is against the OECD recommendations and generally accepted best practices⁵⁹. It also conflicted with requirements set out by the European Energy Community, which stipulate ownership unbundling of SOEs involved in transmission and generation activities. The transfer became effective with the approval of the Ministry of Finance on February 4, 2019.

It is the first time that the Ministry of Finance assumes ownership functions vis-à-vis a non-financial Ukrainian SOE. As the new competent body, the powers and responsibilities of the Ministry of Finance (as per Law 1405 and the Law on Joint-Stock Companies) include (but are not limited to):

- Adopt decisions granting consent on the company's material business obligations and/or alienation, transfer and signing-off of the company's property included in the company's fixed assets;
- Approve the strategic development plan, annual financial plan, investment plan, and mid-term investment plans (for 3 to 5 years) of the company, and monitor their implementation;
- Ensure, in accordance with the CMU procedure, payment to the state budget of Ukraine of a certain portion from the company's profit (income);
- Agree and enter into cooperation agreements, commission agreements, agency and management agreements (including amendments thereto); and monitor compliance therewith.

In addition to being the ownership entity of Ukrenergo, the Ministry of Finance also forms and ensures the implementation of the financial, budgetary, tax and customs policy of the State. In this capacity, the Ministry of Finance is in charge of coordinating the financial plans of all SOEs (including those operating in the energy field) and, of providing state guarantees for their loans. It also issues recommendations on the amount of the net profit (or dividend) that should be paid by SOEs to the state budget, but does not take part in the establishment of strategic objectives of enterprises. However, as the new "authorized management body" of Ukrenergo, this is likely to change as the Ministry plans to adopt a ministerial order establishing "clear goals" for the company. It is also worth noting that the Ministry of Finance exercises a role in influencing the dividend policy of SOEs (which feeds into the budget cycle), which could represent

⁵⁹ This concern arguably also applies to a number of other energy companies in Ukraine.

a potential conflict of interest with its new ownership role of a strategically important SOE such as Ukrenergo.

The ownership function for Ukrenergo of the Ministry of Finance is still in its early stages of formation. The Ministry has recently established a special unit in charge of exercising ownership responsibilities. It consists of approximately 8 employees, most of which are said to be experts with different skills, including employees from the Ministry of Energy to facilitate the transition of the ownership function and coordinate on the policy level. It should be recalled that by law, the state ownership entity is tasked with approvals of key expenditures by the company as well as approving the disposal of state assets (with no minimum thresholds). These responsibilities, which aside from allowing the state to intervene in the day-to-day operations of the company, also pose a considerable burden on the public administration. Officials from the Ministry of Finance concede that such practices are cumbersome, but that they remain a legal requirement. Any changes to the current practices would require a change in the current legal framework as well as more broadly a change in the public sector culture as to what the role of the owner/shareholder should be.

Prior to the transfer of ownership to the Ministry of Finance, the Ministry of Energy was reportedly not a very active owner, “limiting its actions to monitoring formal compliance with the law and all specified procedures [...]” (Boytsun, 2017^[32]); nevertheless with the limited scope of its powers it would “often intervene in the day-to-day management of the company”, which is not in line with OECD best practices. With the introduction of the Supervisory Board and the corporatisation of the company, the functions of the state vis-à-vis the management of the company have been better articulated, although certain aspects remain unclear (e.g. preparation of strategic plans and appointment of the CEO).

Hence, the ability of the Ministry of Finance to act as an informed and professional owner has yet to be tested. The realisation of the corporatisation of the company by July 2019, albeit following delays, represents an important milestone. Interviews with Ministry officials indicated that with corporatisation now completed, the Ministry was planning to shift focus to other relevant areas under its responsibility, including as a priority, establishing ownership expectations for the company. A draft of this so-called “ownership policy” has been submitted to the CMU and Ministry of Economy for approval and was planned for adoption by the end 2019. The document defines 1) main objectives and priorities, according to which the state owns the company; 2) basic principles and mechanisms of management for the company; and 3) expected results of the company’s activity in 2020-2024 (see Annex B for full text).

Other entities involved in Ukrenergo’s supervision and regulation

In addition to the ownership unit, the following government institutions and ministries have a role in overseeing or regulating the operations of Ukrenergo [Table 6.1].

The Cabinet of Ministers of Ukraine: As the central executive authority, the CMU is in charge of approving and monitoring state policy in the energy field (for which Ukrenergo routinely submits its proposals to the CMU). Hence, according to Article 5 of the Electricity Market Law, the CMU has the right to approve the Energy Strategy of Ukraine and to set public service obligations to SOEs, amongst other aspects.

The CMU is also empowered to decide on the ownership of a state-owned business and has, in this context, led the procedure for transfer of Ukrenergo from the management sphere of the Ministry of Energy to the Ministry of Finance and coordinated the reorganisation process of Ukrenergo from a State Enterprise to a JSC.

The Ministry for Development of Economy, Trade and Agriculture: as the supervising entity of the SOE reform in Ukraine, the MDETA is responsible for developing the methodology underlying SOE financial plans, amongst other aspects. Specifically with regards to Ukrenergo, the MDETA has a role to play in

determining the ownership policy as well as the dividend rate applicable to the company. The Ministry of Finance (as the ownership entity of Ukrenergo) is also obliged to report to the MDETA on economic performance of SOEs, current state of SOEs, and contracts with top management.

Table 6.1. Entities involved in the supervision and regulation of Ukrenergo

Institution	Role vis-à-vis Ukrenergo
Cabinet of Ministers of Ukraine	<ul style="list-style-type: none"> • Sets criteria for establishing a supervisory board in the company as well as criteria in relation to the independent status of supervisory board members; • Approves the procedure for determining ownership rationales, insurance for management and boards, appointment of state representatives in the supervisory board, information disclosure, and competitive selection of independent board members, amongst other aspects; • Sets criteria for the audit of financial statements (including consolidated) of the company independent auditors; appoints unscheduled audits regarding the use of state property; and establishes the procedure for such audits;
Ministry for Development of Economy, Trade and Agriculture	<ul style="list-style-type: none"> • Supervises the SOE reform in Ukraine and develops the methodology underlying SOE financial plans; • Sets performance criteria for the SOE sector in general; • Establishes the dividend rate for the company (together with the Ministry of Finance); • Prepared methodological guidelines on inventory and accounting of state property (as used by Ukrenergo's Reorganisation Commission); • Advises on the ownership policy/charter of individual SOEs.
Ministry of Energy	<ul style="list-style-type: none"> • In charge of establishing, implementing and supervising state policy in the energy sector; coordinating the investment programme of Ukrenergo and approving regulations on issues related to the transmission of electricity
National Energy and Utilities Regulatory Commission	<ul style="list-style-type: none"> • Regulates, monitors and controls entities engaged in the energy sector. This includes adopting the methodology on setting prices and tariffs for Ukrenergo's services; issuing licences and certifications to Ukrenergo; and approving certain key company documents.
National Securities and Stock Market Commission	<ul style="list-style-type: none"> • In charge of issuing and implementing regulations governing corporatised entities in Ukraine

Source: based on information provided by Ukrenergo and other stakeholders in the standard OECD questionnaire.

The Ministry of Energy and Environmental Protection: As the main central-government body in charge of establishing, implementing and supervising state policy in the energy sector; the Ministry of Energy is in charge of (1) coordinating the investment programme of Ukrenergo according to NEURC Resolution No. 1972 (of 30 June 2015),⁶⁰ and (2) approving regulations on issues related to the transmission of electricity (CMU Resolution No. 208 and Electricity Market Law), amongst other aspects. Until recently, the Ministry of Energy also held one seat in the supervisory board of Ukrenergo, however it is currently not represented anymore.

The National Energy and Utilities Regulatory Commission: NEURC (which recently went from being a permanent independent state collegial body to a special agency subordinated under the CM) is in charge of:

- Regulating, monitoring and controlling entities engaged in power and utilities sector - including through the adoption of market rules; and monitoring their compliance with legal obligations (including international obligations and technical cooperation with ENTSO-E in the case of Ukrenergo);
- Adopting the methodology on setting prices and tariffs, and approving prices and tariffs for electricity transmission and dispatching services delivered by the company (as a natural monopoly);

⁶⁰ The Ministry of Energy has agreement power only on the technical part of the investment programme.

- Issuing licences and certifications to Ukrenergo and its regional branches; and
- Approving investment programmes, 10-year development plans, and the report on generation adequacy of Ukrenergo; and contributing to forecasts regarding energy supply and demand, which is important for maintaining the supply-demand balance in real-time and ensuring safety and continuity of electricity transmission.

The State Property Fund of Ukraine (SPF): the SPF is a central executive body with a special status in charge of implementing state policy in the sphere of privatisation, and management of state property within its competence. With regards to Ukrenergo, the SPF is in charge of (1) confirming transfer of state property to the registered capital of the corporatised SOE (in line with the procedure established by Order No. 17 of the State Property Fund, dated 12 January 2017); and (2) submitting a valuation report on Ukrenergo as part of the assets inventory process of the company. With corporatisation complete, the SPF no longer plays a role in Ukrenergo's oversight.

The National Securities and Stock Market Commission (NSSMC): is a state collective body in charge of implementing the state policy on securities and stock market in Ukraine. The NSSMC is notably responsible for issuing and implementing laws and regulations for joint-stock companies, including on corporate governance and financial disclosure.⁶¹ Since Ukrenergo's corporatisation, NSSMC has acquired oversight rights over the company, although in practice, the Commission lacks sufficient supervisory, investigative and enforcement powers as evidenced by a 2016 IMF report (IMF, 2016^[53]).

6.2. Ownership policy and rationale for owning Ukrenergo

In October 2018, the Government of Ukraine (under the leadership of the MDETA) approved a basic ownership policy called "Basic Principles - Introduction of an ownership policy for state-owned enterprises" (hereafter, "Basic Principles"), defining the overall rationales for state ownership by the government of Ukraine. The document identifies key objectives for exercising state ownership and defines general principles for exercising management of SOEs, such as (1) the definition of clear (commercial and non-commercial) objectives for the company by the ownership entity; (2) corporatisation of commercially-oriented SOEs to ensure a regulatory level-playing field; (3) separation of ownership and regulatory functions of the ownership entity; (4) competitive and transparent board nomination process; (5) and transparency of company activities to reduce corruption risks among other aspects (Government Portal, 2018^[54]).

The Basic Principles also require ownership entities to develop and approve separate ownership policies for large and strategically important state-owned enterprises. The company-specific "ownership policy" (or owner's expectations) for Ukrenergo have been recently drafted by the Ministry of Finance, with the assistance of the MDETA and corporate governance advisors. The document, which was expected to be adopted by the end of February 2020, would seek to align with the Energy Strategy of Ukraine until 2035, and its role as a TSO under the Electricity Market Law [see Annex B].

In addition, current laws and regulations also relate the rationale for state ownership to the company's strategic importance for the country (as the guarantor of Ukraine's energy security and integrity) and its natural monopoly status, which calls for government intervention to ensure the provision of electricity supply at an efficient cost. In fact, the company is included in the "List of State-Owned Entities of Strategic Importance to the Economy and Security of the State", as approved by CMU Resolution No. 83 (of 4 March

⁶¹ This includes a potential revision of the 2014 Corporate Governance Code (currently applicable on a voluntary basis to stock market participants). The project is currently on hold due to a lack of funds but once developed, it would apply to all joint-stock companies on a comply-or-explain basis.

2015). Companies in this List are, according to Article 4 of the Law No. 2269-VIII “On Privatisation of State and Municipal Property”, strictly prohibited from being privatised.

6.3. Objective setting and communication

The Ownership policy of Ukrenergo is the first document to establish certain objectives for the company, namely: 1) public policy objectives such as dispatching electricity and ensuring operational security of the IPS of Ukraine, and 2) commercial objectives such as the provision of electricity transmission services and commercial electricity metering service amongst others aspects.

Before the adoption of the new ownership policy of Ukrenergo, there was no official document establishing broad mandates and/or specific objectives (including public policy objectives) to Ukrenergo. Objective setting for SOEs is generally weak in Ukraine although there are requirements set in the legislation. In particular, according to paragraph 3 of the “Procedure for setting clear objectives for SOEs” (as approved by CMU Resolution No.1052 in November, 2016), ownership entities (or the General Shareholder’s Meeting for majority-owned SOEs) are required to set clear objectives (both commercial and public policy objectives) for their enterprise(s), taking into account the main business activities of the enterprise. These goals shall be established on an annual basis by the 15th of December for the following year. This is in line with Ukrenergo’s Charter which also reiterates that the “General Meeting” (i.e. ownership entity) should determine the main areas of activities and set clear goals for the company, upon proposals of the company’s Management Board. These goals had, however, not been outlined yet by the Ministry of Finance at the time of writing.

In addition to this, Ukrenergo’s financial, non-financial, strategic and operational objectives are more specifically set out in the company’s strategic and development plans, which all require formal approval from a certain number of government bodies and institutions, which are also in charge of monitoring their implementation [Table 6.2]. The extent to which the formal approval process entails an informed discussion between the company’s Board, its management and the shareholder remains uncertain. As mentioned, the current dialogue between the Shareholder and Ukrenergo’s Board has been very limited and the current (new) shareholding entity is still rather weak in this regard, given the sectorial specificities of the company’s operations. Financial plans which are first approved by the Supervisory Board contain performance objectives and targets such as profit, EBITDA, profitability ratios, financial stability and liquidity ratios, or capital investment analysis ratios which need approval from the Ministry of Finance and the CMU on a quarterly basis as per formalised procedures. Public service obligations or other ownership expectations for Ukrenergo are, however, not well defined nor clearly communicated in any of these documents.

Table 6.2. Approval process for Ukrenergo's key documents

Document	Content	Approval	Current approval status
Strategic plan	<i>[no information has been provided by Ukrenergo on the content of the strategic plan]</i>	Ministry of Finance	Approved by the Supervisory Board on 16 April 2019
Annual financial plan	Financial plans are developed based on the expected tariff of Ukrenergo (as approved by NEURC for the respective year). They contain performance indicators such as 1) profit/loss; 2) EBITDA; 3) profitability ratio; 4) financial stability and liquidity ratios, etc.	Ministry of Finance Cabinet of Ministers of Ukraine	Approved by the CMU on 23 April 2019 [The financial plan for the following year has not been approved yet].
Annual investment plan	The purpose of the investment plan is to account for planned expenditures allocated for capital investments in construction, reconstruction, technical equipment, purchase of tangible and intangible assets, etc.	NEURC Ministry of Energy Ministry of Finance	Approved by NEURC on 29 March 2019 (for the previous year)* Approved by the Ministry of Energy on 14 September 2018 (for the next year). [Not approved for year 2020].
Mid-term development plan***	Ukrenergo's strategic development plan for 2018-2022 provides for 1) tariff optimisation; 2) ensuring robust operation of main power transmission lines and 3) ensuring integration of Ukraine's IPS to ENTSO-E amongst other aspects.	Ministry of Energy Ministry of Finance	<i>[no information on the current approval status of this document]</i>
10-year development plan	Provides the long-term prospect for the development of the transmission system.	NEURC	(a draft of the 2020-2029 Development Plan is currently under consideration)

Note: Ukrenergo's investment plan for 2019 was supposedly approved in the amount of UAH 3.303 billion, which is twice less than what was suggested by the company (Ukrinform, 2019^[55]). ** It should be noted that, according to Order No. 205 of the MDET (of 2 March 2015 - amended by Order No. 1070 of 31 July 2018), enterprises undergoing a reorganisation process are not required to submit strategic development plans until the reorganisation process is completed

Source: Ukrenergo questionnaire, 2019.

As mentioned, the Ministry of Finance is currently adjusting to its new role as a shareholder and therefore has had only minimal interaction with Ukrenergo – focusing on immediate requirements for market integration instead of operational issues of the company. Communication was also hampered by the fact that the Ministry of Finance still didn't have a representative in the Supervisory Board of Ukrenergo. Prior to the ownership transfer of Ukrenergo to the Ministry of Finance, the communication with the Ministry of Energy was reportedly “not very clear”. In particular, it appears that the exercise of the ownership function by the Ministry of Energy was not well-structured and that the company was burdened by the bureaucratic process involved in getting approvals from the owner and other government entities (OECD, 2018^[5]). As a result, a large number of investment operations have been postponed or backlogged due to the lengthy approval process (some of which may take up to three years). This situation might complicate the relationship with the shareholder and even hinder the perception that the company is truly an “independent” TSO in view of the European Energy Community's criteria. More generally, the heavy reporting and approval process for Ukrenergo's key strategic document negatively affects the company's performance by hampering its ability to effectively plan and implement its investment projects. As an example, the annual investment plan for 2020 has reportedly not been approved by the Ministry of Finance for unknown reasons. Ukrenergo has contested the decision and brought the case to the court in January 2020. More generally, the requirement to have investment plans approved by the Ministry of Energy raises potential conflicts of interest given that the Ministry of Energy also owns a portfolio of companies operating in the electricity generation.

6.4. Performance evaluation and monitoring

According to Article 6 of the Law on Management of State Property, ownership entities are required to monitor the implementation of strategic plans, annual financial and investment plans, as well as mid-term (3-5 years) investment plans, using the guidelines set by the MDETA in its Order No.253 (par. 2) of 15 March, 2013. The document identifies some criteria for assessing SOEs' financial and business performance, including:

- Absence of outstanding salary payments;
- Average monthly salary dynamics for staff employees (on an early basis);
- Financial targets: net income from the sale of products and services; net profit/loss; net profit to be paid to the state budget; capital investments; current ratio; financial stability ratio; solvency ratio, etc.

The CMU is also required to monitor financial performance of SOEs (including Ukrenergo) using the Guidelines for Assessing Fiscal Risks of SOEs (established by CMU Resolution No. 7 of 11 January, 2018). For this purpose, Ukrenergo is required to submit information to the CMU on its (1) financial and economic activity; (2) liabilities; (3) outstanding debts and obligations; and (4) and quasi-fiscal operations, amongst other aspects.

As per Ukrenergo's Charter, the Ministry of Finance is also in charge of establishing performance indicators for the Supervisory Board of the company, taking into account the company's objectives, and of assessing the performance of the Board accordingly.

6.5. Board nomination and appointment

As previously mentioned, the Supervisory Board of Ukrenergo was established on 3 October 2018, upon approval of the Cabinet of Ministers of Ukraine.⁶² State representatives to the board are appointed by the ownership entity, while independent board members are subject to a competitive selection process in accordance with the laws of Ukraine.

The appointment of independent members to the Supervisory Board was carried out through a competitive selection process which was first announced in January 2018. The deadline for submission of documents was scheduled for 2 March 2018, however the CMU changed the procedure while the selection process was underway – thereby delaying the establishment of the new board.⁶³ The new procedure for appointing Supervisory Board members in SOEs is regulated by CMU Resolutions No. 142 and No. 190, which foresee the competitive selection and appointment of independent supervisory board members and CEOs of important SOEs, to be carried out by the Appointments Committee of the MDETA.⁶⁴ Hence, the competitive process was resumed in April 2018 under the framework established by the CMU. A total of

⁶² Prior to this, the only governing body of Ukrenergo was the CEO of the company, who was directly accountable to the ownership entity (the Ministry of Energy at the time). The CEO was subject to a “competitive selection process” in 2015 as per CMU Resolution No. 777.

⁶³ Before the process resumed in April 2018, there were allegations that some “dubious” candidates had been named by insiders and vetoed by the Nomination Committee, leading to the suspension of the process in March 2018 and its resumption under a new procedure the following month.

⁶⁴ It should be noted that Regulation 190 was subject to litigation. The Court decided that selection procedures that started before adoption of the Regulation were suspended unlawfully (Decision of Kyiv District Administrative court № 826/15551/18 of 12.12.2018)

66 candidates (including 24 foreigners and 4 women) submitted their applications for joining the board of Ukrenergo (Government Portal, 2018^[56]).

The process was led by the Ministry of Energy (as the ownership entity) which (1) issued a decision on the establishment of Ukrenergo's Supervisory Board (based on the criteria established by the CMU); (2) established the procedure for competitive selection of independent board members; (3) approved the relevant amendments to the company's Charter; (4) approved the regulations on the Supervisory Board, its composition and remuneration of board members; and (5) provided recommendations on the qualifications, experience, and independence requirements for Supervisory Board members. Once the process resumed under the competitive procedure, the overall process was said to have been transparent and professional.

Box 6.1. Competitive selection process of SOE board members in Ukraine (as amended in November 2019)

According to the procedure set by CMU Resolution No. 927 of November 2019^{*}, the MDETA (previously the CMU) is empowered to establish an Appointments Committee to carry out the competitive recruitment process for CEOs and board members of SOEs of particular economic interest, and a Secretariat providing administrative and operational support to the Committee. Within this framework, the ownership entity is required to announce the selection process and inform the Appointments Committee on the requirements for the candidate(s). Subsequently, the Secretariat of the Committee publishes the announcement and proceeds with the registration and verification of documents submitted by applicants. Candidates who meet the formal requirements are then pre-selected and proposed to the ownership entity (or professional recruiters in the case of independent board members) for its consideration. Finally, short-listed candidates are submitted to the Appointments Committee for its final decision.

The Appointments Committee consists of three government representatives (*ex officio* representing the MDETA, Ministry of Finance and the head of the authorised ownership entity) and four independent "experts" (in the past, these experts included representatives from international financial institutions). The independent experts have an "advisory vote". The main objectives of the Appointments Committee are to (1) approve the requirements and criteria for candidates; (2) review proposed candidates and issue an opinion on their respective applications to the CMU; and (3) prepare recommendations on the terms and conditions of the contracts to be signed with the CEO and/or board members. It should be noted that further to recent amendments, the government now gives one of the "advisory votes" to a member of the respective company's supervisory board only for the selection of independent supervisory board members.

All board members (including state representatives) are appointed based on mandatory requirements, which include: (1) higher education, and professional experience in line with the knowledge and skills required for the position (in the particular area of activity of the company), (2) full civil legal capacity; and (3) absence of any criminal record. In addition, board members have to comply with the following requirements: (1) demonstrate integrity, impartiality and an excellent business reputation, (2) not have held elected positions or been an official of a public authority and/or local government; and (3) meet the independence requirements stated in Article 113 of the Law on Management of State Property. Further requirements may be established by the ownership entity.

Note: ^{*} The new Resolution replaces Resolution No. 142 of March 2017.

Following the corporatisation of Ukrenergo (in line with par. 39 of CMU Resolution No. 777 as amended in 2020), members of the Supervisory Board that have gone through the competitive selection process established by the CMU “shall be appointed to their respective positions within the new corporatised entity, without holding a new selection process”.

Part III. Conclusion and Recommendations

7. Conclusion and recommendations

Based on the analysis in sections I and II, this section identifies some key challenges with regard to the corporate governance reform of SOEs in the electricity sector, looking at Ukrenergo as a study case. These recommendations were developed through an iterative process, drawing on interviews with various stakeholders over the course of the project, as well as discussions held with government authorities and company management on successive drafts of this review, and subsequent comments received.

The recommendations draw on the OECD SOE Guidelines as their main reference document. Due to the specific nature of this review, recommendations only address the most relevant corporate governance areas for reform both at the level of the company and the electricity sector in general. This review establishes a preliminary basis for the upcoming SOE Review of Ukraine, which will provide a comprehensive and systematic evaluation of the country's implementation of the SOE Guidelines.

The remainder of this section provides a summary of the main conclusions of the review, as well as a first set of recommendations primarily addressed to the state's role as owner and shareholder of Ukrenergo, followed by a second set of recommendations addressed at the Ukrainian Government as regulator and policymaker in the electricity sector; and a third set of recommendations focusing more specifically on the governance of Ukrenergo.

7.1. Conclusions

Over the past five years, the Ukrainian government has adopted a number of key reforms, an important component of which deals with state-owned enterprises and state accountability. Those include the approval of a "Basic Ownership Policy" for the SOE sector in October 2018; the professionalisation of board nomination practices through the establishment of a Board Nomination Committee for the selection and nomination of CEOs and Supervisory Boards in large SOEs, the publication of annual aggregate ownership reports for the top-100 SOEs in Ukraine from 2014 to 2019, and more recently the launch of an e-reporting system with financial indicators of more than 3700 centrally-owned SOEs in 2019. The outgoing government had shown clear interest to pursue and deepen the reforms notably through adopting an ambitious privatisation programme and plans to establish a new holding company that would exercise ownership rights of a significant proportion of large SOEs (estimated to be around 69 companies) on behalf of the Government at arm's length from policy-making.⁶⁵

The former Government had also announced several key changes to the legislation governing state property in order to clarify ownership policies and empower SOE boards amongst other aspects. While these efforts constitute important advancements in view of improving and clarifying corporate governance of state-owned enterprises and state ownership practices in general, they are yet to be implemented and - specifically for the energy sector - would need to be combined with general improvements in the

⁶⁵ Note that Ukrenergo would be left outside the scope of this model in view of legal requirements related to the EU Third Energy Package.

functioning of the sector (which is currently dysfunctional and prone to conflicts of interest) in order to be truly effective. Therefore, until key issues are anchored in more robust legislative and policy framework, the current reform remains fragile and subject to political intervention (as exemplified by a certain number of corporate governance setbacks). It remains to be seen if the new government formed in March 2020 will continue with the same reform programme, despite the mounting economic pressures and need for structural reforms related Covid-19 induced economic crisis.

In fact, given its importance for national security and independence, the energy sector has always been a particular focus area of reform. Within this framework, a few important SOEs, including Ukrenergo have undergone major corporate governance reform since the adoption of the Electricity Market Law in 2017. Most noticeable changes include the appointment of its first independent Supervisory Board in October 2018; the corporatisation of the public enterprise in July 2019, a move towards IFRS standards in corporate reporting, and more recently the creation of a more robust system of internal controls including the establishment of compliance and internal audit units over the course of 2019, amongst other aspects. While these changes take place against the background of ensuring Ukraine's compliance with the Energy Community's acquis to ensure integration with the European energy market, they also contribute towards improving Ukrenergo's corporate governance practices and aligning them closer to the standards of the SOE Guidelines.

Despite this, however, important issues remain both at the company and state levels of governance. Issues of general nature include usual shortcomings associated with Ukraine's current decentralised ownership arrangements (e.g. conflicts of interest, limited monitoring capacity); the lack of a comprehensive state ownership policy and autonomy of SOEs, as well as frequent state interventions in SOEs' operational activities. Furthermore, the apparent lack of empowerment (mostly due to lack of resources and funding) of regulators such as the Anti-Monopoly Committee of Ukraine (AMCU) and the lack of independence of NEURC, coupled with the general weakness of low enforcement powers in Ukraine, aggravates the risk that policy-makers make politically-motivated decisions at the expense of SOEs' commercial performance.

At the level of Ukrenergo, several overarching concerns remain in particular as regards the financial situation of the company, as well as potential corruption risks in procurement, amongst other aspects. The company is at the initial stage of implementation of its new Charter, and is currently also facing an unstable and fast-changing regulatory environment to adapt to the realities of the newly reformed electricity market (with frequent changes in its tariff and public service obligations) for which it will be important to continue monitoring future developments and progress in order to establish a clearer picture of the company's corporate governance practices. For the time being the following measures are recommended to remedy current concerns, and further align Ukrenergo's corporate governance practices and Ukrainian state ownership practices with the SOE Guidelines:

7.2. Recommendations

Recommendations addressed to the state as owner and shareholder of Ukrenergo

Recommendations were already addressed to the Ukrainian government in a previous OECD review of the Hydrocarbons sector (2019). Most of these recommendations are still relevant and valid within the framework of this review. They include:

1. *Upgrade the legal and regulatory framework to address inconsistencies between the Joint Stock Company Law (and relevant amendments) and the Law on Management of State Property (and relevant amendments).* The legal and regulatory framework applicable to Ukrenergo (and SOEs in general) remains complex and contradictory. While Ukrenergo has been recently corporatized

in the form of a joint stock company, the contradictory provisions of the JSC Company Law and Law on Management of State Property (which are both equally applicable to incorporated state-owned enterprises) create opportunities for political interference and uncertainty. In many SOEs, including Ukrenergo, the state-owner and the company have attempted to clarify inconsistencies between applicable laws and Corporate Charters of individual companies. An example is the right to appoint and dismiss the CEO. In the case of Ukrenergo, the Charter empowers the Supervisory Board with this competence. However, Corporate Charters are vulnerable to revision (as underlined by the recent case of Naftogaz) and it would be advisable to streamline the legal framework applicable to incorporated SOEs to be in line with the Joint Stock Company Law.⁶⁶ The SOE Guidelines call for the government to “simplify and standardise the legal forms under which SOEs operate”. In that sense, the foreseen adoption of a new harmonised law on state ownership (e.g. the successor to draft law 6428) could clarify inconsistencies and further promote corporate governance practices in line with the SOE Guidelines.

2. *Establish a professionalised and centralised state ownership entity that can champion SOE reform.* In the context of Ukraine’s decentralised ownership arrangements, considerable progress could be achieved through the establishment of centralised ownership arrangements. At the time of writing, the Ukrainian government had just announced its plans to create a new SOE holding company, called the “National Wealth Fund” (NFW) in the Government’s Five-Year Programme. According to plans presented, the NFW would be established as a holding company under which a portfolio of approximately 69 state-owned companies not slated for privatisation will be transferred from line ministries. While the establishment of such a centralised ownership entity would considerably help mitigate shortcomings associated with Ukraine’s decentralised ownership arrangements as noted in the OECD review of the hydrocarbon sector (2019), it is important that proper accountability requirements are in place and that the entity is sufficiently resourced – with finances, staff and institutional authority – to effectively undertake its functions. This would also require some form of coordination between the new holding company and other relevant entities exercising ownership rights over SOEs in Ukraine. In addition, although the Ukrainian government has announced its intention to phase out the annual aggregate reporting in 2020 (to be replaced by an online inventory of SOEs), its continued publication would constitute an important tool for strengthening the accountability of the state shareholder, as per OECD standards, by serving as a key disclosure tool directed to the general public, the legislature and the media. In general, there should be a whole-of-government approach with respect to developing the ownership policy, legal framework and aggregate reporting.
3. *Strengthen the capacities of the ownership entity responsible for Ukrenergo.* The Ministry of Finance has been exercising ownership rights over Ukrenergo since February 2019. In its new capacity, the Ministry has been facing a few challenges, including 1) an unclear separation between its ownership role and fiscal oversight functions; and 2) a lack of financial and staff resources, which has caused delays in the adoption of several key documents including the ownership policy of the company (a draft has been developed but the approvals process has been lagging). It should be mentioned that the Ministry of Finance is rather “new” at overseeing companies in the energy sector as it had previously only exercised ownership rights on behalf of the state in state-owned financial institutions. Thus, the move of the two transmission system operators in the electricity and gas sectors⁶⁷ represents a rather important shift in the ownership portfolio of the Ministry. This requires sectorial knowledge and significant resources (for example

⁶⁶ It should be noted that a revision of the Joint Stock Company law is currently underway.

⁶⁷ It should be noted that the gas transmission operator, MGU, was transferred under the oversight of the Ministry of Finance in 2019.

the ability to set performance indicators and benchmark Ukrenergo in line with industry standards). The Ministry is aware of the need to professionalise its ownership role and to develop expertise in the energy companies it oversees. At the time of writing, the Ministry of Finance was still considering to establish a special unit that would deal with both TSOs, including a sub-unit specifically responsible for corporate governance issues. In addition, another issue concerns the lack of well-established communication channels or coordination mechanisms between the company and its shareholder with regards to the official approval process (which includes the Ministry of Energy, the CMU and the regulator amongst others) for Ukrenergo's key financial and strategic documents. As for other SOEs, the process is said to be cumbersome and lengthy which directly affects the company's financial and strategic planning and decision-making. For greater efficiency and in line with the SOE Guidelines, it would be advisable to shift responsibilities for the approval of key documents such as the company's strategy, financial plan, business plan, and investment plan to the Supervisory Board. This could serve to relieve the ownership entity of unnecessary administrative burden and would move in the direction of internationally agreed corporate governance practices.

Recommendations addressed to the state as policy maker and regulator of the electricity market

1. *Strengthen the independence and effectiveness of the energy regulator.* As evidenced by several evaluation reports from IFIs, including from the Energy Community Secretariat (2018 and 2019⁶⁸), there have been several shortcomings identified with the governance and independence of the regulator, the National Energy and Utilities Regulatory Commission (NEURC), which is in charge of setting transmission and dispatching tariffs for Ukrenergo. These changes have been disruptive to the role of the NEURC in being an effective regulator in a formative time in the development of the electricity markets in Ukraine. For example, since the launch of the wholesale market in July 2019 Ukrenergo's tariff-setting mechanism has become political, with frequent changes to the electricity transmission and dispatching tariffs and certain industrial consumers contesting to pay higher tariffs (particularly compared with residential consumers). The regulator has also been unable to implement a stable tariff mechanism reportedly due to volatility in the months following the electricity market reform. This is in turn affecting the company's financial situation and ability to perform its new functions and responsibilities, including its Public Service Obligations (PSO). The December 2019 amendment to the NEURC Law - which transformed the NEURC from an "independent" body to a central executive authority with special status and subordinated to the Cabinet of Ministers - is likely to further impede its ability to act as an independent body. The new institutional arrangements can further strain the recognition of the regulator's ability to certify Ukrenergo as a TSO – which is an important prerequisite to integration in the ENTSO-E. The Government of Ukraine should work towards establishing an independent regulator that, at minimum, meets the criteria established by the Energy Community which calls for the regulator to be (1) "independent from both industry interests and government"; (2) its "own legal entity;" and, (3) "have authority over its own budget and have sufficient resources to carry out its operations". Further guidance on the structure and governance of regulators may be found in 2012 OECD

⁶⁸ The National Energy Regulatory Authority of Ukraine: Governance and Independence an Update of the Energy Community Secretariat's Review of March 2018

Recommendation of the Council on Regulatory Policy and Governance (OECD, 2012) and related implementation guides.⁶⁹

2. *Carry out the certification of Ukrenergo as the TSO.* The certification of Ukrenergo as the TSO and integration into the ENTSO-E is an important prerequisite to fulfilling the requirements of the EU's Third Energy Package, the objective of which is to increase reliability and enhance competition in the Ukrainian internal market. The certification of Ukrenergo has suffered considerable delay since the launch of the new electricity market, and while the company has managed to meet most of the requirements for certification (namely, ownership unbundling, corporatisation and corporate governance reforms) it still has to ensure transmission system ownership. In this respect, the Ukrainian government would be well advised to extend the rights of Ukrenergo to grant Ukrenergo the title for the usage of the transmission grid, beyond the current "right of economic management" which is not sufficient to guarantee its independence. At the time of writing, the government was reportedly in the process of drafting legislation to establish an "independent system operator" model⁷⁰ (ISO) – similar to what was done in the case of the gas transmission system operator – to ensure compliance with the requirements of the Third Energy Package and to resolve the *impasse* concerning the ownership rights of the transmission system, which under Ukrainian law, must remain under state-ownership.⁷¹ The ISO model would presumably grant Ukrenergo the title for usage of the transmission assets for a pre-defined period for the purpose of transmission system operation.
3. *SOEs operating in the electricity generation should compete on equal footing with privately-owned electricity producers.* Although it is still early to evaluate the market functioning, some issues have been identified regarding the viability of SOEs operating in electricity sector and how the state plans to fulfil public service obligations over the long-term, which merit the close attention of relevant authorities including NEURC. As discussed earlier, the public service obligations imposed on the two state-owned generation companies require that 90% of the electricity produced by Energoatom and 35% of the electricity produced by Ukrhydroenergo to be sold in bilateral auctions to the Guaranteed Buyer through 1 July 2022. The Guaranteed Buyer shall then sell electricity to the universal service suppliers. The transmission system operator and distribution system operators are obliged to purchase 80% of their network losses in the day-ahead market.⁷² As noted by the Energy Community Secretariat, this brings back the single buyer model and has a negative impact on state-owned generation as the market for the two cheapest producers – comprising almost 60 % of all electricity generation in Ukraine – is foreclosed due to the PSO

⁶⁹ See for example: OECD Best Practice Principles for the Governance of Regulators (OECD, 2014); Being an Independent Regulator (OECD, 2016); and The Governance of Regulators Creating a Culture of Independence: Practical Guidance Against Undue Influence (OECD, 2017)

⁷⁰ The ISO model splits the transmission ownership from the system operation. Under the ISO model, the operator has no direct interest in the financial performance of any of the assets that incorporate or utilize the transmission network.

⁷¹ For the Gas TSO a Decree of the Cabinet of Ministers No 1087-p of 15 November 2019 was passed. According to the Decree, the state is represented in its ownership function over the transmission assets by the Ministry of Finance. The economic management rights agreement between the Ministry of Finance and gas TSO constitutes the title for usage of the transmission assets for a period of 15 years for the purpose of transmission system operation, and sets out the rights and obligations of the signatories.

⁷² The obligations of TSO and DSOs to purchase losses via e-auctions were excluded with last amendments to the CMU Resolution in December 2019. Currently according to the NEURC Resolution No. 2896 (approved on 17 December, 2019) starting from January, 1, 2020 TSO and DSOs are obliged to purchase 80 % losses on the day-ahead market.

scheme and currently cannot reach the open market. Other means (as discussed below) are available to ensure most disadvantaged households are offered direct support. SOEs operating in the electricity sector should be able to compete on equal footing with privately-owned electricity producers, and should be enabled to trade larger volumes of electricity on the wholesale market - which over time, conditions for greater and fairer competition in the electricity market and may also contribute to lower electricity costs in Ukraine.

4. *Organising the wholesale market in such a way that no market player will be discriminated against and real competition can take place, including from abroad.* The concentration of a limited number of actors, including SOEs across the full value chain of the electricity sector - from primary energy production, to electricity generation and supply (note that transmission and distribution will remain monopolies) - raises important competition concerns that should be explored by relevant authorities in Ukraine including, but not only, the Anti-Monopoly Committee and NEURC. For the time being, the Ukrainian market is still strongly regulated regarding both the role of different players and prices. This has the objective to keep the prices for households under control. Substantial volumes of energy produced by the two main state-owned generators, Energoatom and Ukrhydroenergo, are reserved to subsidise cheap electricity for households under the public service obligation. With remainder of the volumes available for sale in the wholesale markets, the markets can be at risk for abuse of dominance by other market actors in certain periods⁷³. Thus, careful measures must be taken to mitigate the risk of market abuse. This includes introducing transparency and market monitoring measures to prevent and detect non-competitive behaviour by market participants. The NEURC and Anti-Monopoly Committee of Ukraine should play an important role to monitor market developments and take action when necessary. At the same token, the market should be progressively opened up to competition including from neighbouring economies. Price caps and other distortive PSOs imposed on SOEs should be eliminated as the market evolves. Instead, the market should be effectively regulated and competition concerns addressed through effective enforcement of competition law. To mitigate any potential concerns about the price of electricity and vulnerable households, preference should be given to direct subsidy schemes that benefit these households.
5. *Ensure proper enforcement of unbundling rules for the DSOs to get retail competition started in the supply market.* This point is particularly critical in order to ensure that more independent suppliers enter the market, keeping in mind that the former *oblenergots* (which have since been unbundled) into suppliers and distribution system operators may still have a tendency to favour their own supply arm. In order to facilitate the entry of independent suppliers, the quality and timeliness of metering data and data on customer switching, for which the independent suppliers are dependent on from the DSOs is important.
6. *Launch the balancing and ancillary services market.* The balancing and other ancillary services markets in Ukraine will influence the cost and the reliability of the electricity system, especially in view of the increased push for renewable-sourced energy production. Balancing and ancillary services can help to mitigate the volatility caused by renewable generation. Competition is one of the key issues, as according to analysts, balancing and other ancillary services markets tend to

⁷³ According to Low Carbon Ukraine, nuclear production, with a low marginal cost, will not determine the market price, thus Energoatom will only influence the market price through the volume it is able to bid in the market. However, only 10% of what it produces can be traded in the day-ahead and intra-day market. Ukrhydroenergo will logically bid at the marginal cost of an alternative producer, which in case of Ukraine is mostly a coal-fired power plant. Given that ownership of coal plants in Ukraine is very concentrated it is not realistic to expect many competing bids at the marginal price. For recommendations 4, 5 and 6 see also Low Carbon Ukraine Policy Paper [PP/03/2019] from June 2019.

be much thinner markets than the day-ahead, intra-day and forward markets. The TSO should play an active role to get potential service providers in the market and to ensure that they are fit for service as per the certification requirements established by the NEURC. As discussed earlier in this report, ancillary services were not procured during July - October 2019 due to no qualified ancillary service providers being registered by Ukrenergo. Due to a lack of active ancillary services market, the balancing market has been a more active tool used by the TSO.

7. *Mechanism for settling the debt legacy in the electricity market.* The government of Ukraine needs to determine a mechanism for settling debts on the electricity market, relating to problems with historical debts and recent unpaid bills from certain consumers, which have brought into question the operation of the supplier of last resort, Ukrinterenergo (already in default status) amongst others (including Energorynok), which represent significant fiscal risks. The Ukrainian government would be well advised to collect the outstanding debt through any means (including winding down customers or taking over customers by the state) or write down the non-performing debt, amongst other possibilities.
8. *Define and compensate public service obligations of Ukrenergo in a transparent and accountable way.* The current public service obligation scheme, while in place to ensure the general public against substantial price surges, places disproportionate obligations over certain market participants and does not, therefore, constitute a fair nor a sustainable solution to counter the effects of opening the electricity market. Under this scheme, the Guaranteed Buyer is responsible for buying electricity produced through alternative sources at a generous feed-in (“green”) tariff – the compensation of which is a responsibility of Ukrenergo. However, as Ukrenergo’s transmission tariffs are being reduced, there is fear that not only will Ukrenergo face difficulties in covering its own operational expenses, but also that it will not be able to pay the Guaranteed Buyer (in fact, the Guaranteed Buyer has already filed a lawsuit against Ukrenergo in order to claim payments). Overall, there may be two challenges associated with this: a) difficulty to pay the Guaranteed Buyer may stall compensation for green energy producers (including foreign investors), and b) a risk of corruption as a significant portion of domestic renewable electricity producers are affiliated to well-known business persons. Under these circumstances, more predictable and transparent PSOs and accountable compensation schemes should be defined. In particular, public service obligations for Ukrenergo should be determined in a transparent way and accounted for separately according to good practices.

Recommendations on governance of Ukrenergo

1. *Assign the necessary authority to the Supervisory Board to carry out core functions of appointing/dismissing the CEO, setting strategy, approving key documents and plans and supervising management.* The Supervisory Board of Ukrenergo should be given the necessary powers to exercise its functions (e.g. approve corporate strategy and financial, business and investment plans) without undue interference of the state in its activities. In fact, while the Charter of Ukrenergo partly empowers the Supervisory Board with such competences. However, as highlighted by recent events, certain uncertainties remain, notably with the right to appoint and dismiss key executives of the company⁷⁴ and to decide on their remuneration (due to the existence of conflicting provisions on this matter, namely the JSC law, Law No. 1405 and CMU Resolution

⁷⁴ Note that on 12 February 2020 the CMU by Government Decision No.9 ordered for the suspension of the competition for CEO of the company until empty board seats – that had remained unfilled since September 2019- were filled. Those seats were filled on 26 February 2020. Though the appointment process is reportedly further delayed due to the impact of the Covid-19 global pandemic.

No. 777). In any case, the OECD SOE Guidelines call for the Supervisory Board to be empowered to appoint/dismiss the CEO to ensure that the CEO is insulated from outside pressure and/or risks being captured by various interests. In addition, the Supervisory Board should be further empowered to approve key strategic documents and the company's financial and investment plans. Currently, several government bodies are responsible for the final approval of the company's strategy, financial, business and investment plans. The long and heavy approval process for such documents often results in delays (and even legal disputes) and opens the door for political intervention and potential conflicts of interest which in turn negatively impacts the ability of the company to effectively plan and also strips the supervisory board of key functions. Finally, the SOE Guidelines also empower boards of directors with the ability to set "executive remunerations that are in the long term interest of the enterprise". Some countries seek to align pay with market rates, but not be market leading. As a general rule, governments should be clear about policies (e.g., caps or benchmarks) that should guide boards' decisions on executive pay and incentive packages.

2. *Alleviate the heavy reporting and approval system for key documents submitted to the Shareholder and other government departments and agencies.* Similar to other SOEs, Ukrenergo has a rather burdensome and heavy reporting process vis-à-vis various state bodies, including the shareholding ministry, the Ministry of Economy, the Ministry of Energy, NEURC and the State Property Fund. The bureaucratic process in getting approvals even for standard commercial transactions is inefficient and interferes with the company's operational management. While it is not uncommon for shareholders to influence the corporation on certain fundamental issues, the company would benefit from requiring approval only for "extraordinary" transactions, which in any case, should be clearly defined and clearly exceptional. Other issues should be subject to approval by the appropriate governing body of the company.
3. *Improve the quality of financial and non-financial disclosure of Ukrenergo.* The financial situation of Ukrenergo should be stabilised and more transparently disclosed. For example, the company's management has not provided a satisfactory explanation for the company's high Return on Equity (RoE) ratio, which could be a sign of over leveraging or a very high profitability. Moreover, the company has been facing "financial disturbances" brought on by the conflict in Donetsk and Luhansk where the company's regional unit (Donbaska) continues to operate. In addition, while the company has been experiencing additional financial disturbances following the launch of the new electricity market (mainly due to the current PSO scheme), the company also has had to deal with unsettled debt accumulated by Energorynok - the state-owned market operator - under the previous market. The financial and non-financial reporting should cover these aspects and provide further clarity to the owner, stakeholders, general public and parliament as to the financial situation of the company as well as potential risks and opportunities presented by the launch of the electricity market.
4. *Allow Ukrenergo to access finance without shareholder approval.* The financial situation of the company is rendered more difficult by the fact that the company faces significant challenges to loan financing, as it requires getting government approvals, as well as guarantees for its loan agreements. Good practice would call for the company to be able to access finance (under certain thresholds) based on market consistent terms. In order to be able to do so, it should have been granted the ability to pledge its assets. As a general principle, the state should not give an automatic guarantee in respect of SOE liabilities. Fair practices with regard to the disclosure and use of state guarantees is necessary, and corrective measures might be warranted to ensure competitive neutrality.
5. *Ensure that highest standards of integrity are applied in a company's internal procurement and purchasing policy.* As pointed out in the review, public procurement practices of Ukrenergo have

noticeably improved over the last few years (notably through the establishment and reinforcement of internal audit, replacement of the management of the procurement team, introduction of personal responsibility for compliance with procurement rules and procedures; and the adoption of an integrated supply chain management process, amongst other aspects). However, risks for breaches of integrity, corruption and subject to conflicts of interest still remain high. Further measures can be taken to address potential corruption and integrity risks, including revisiting its procurement policies. Recommended areas to address include: (1) no mark-up if a provider purchases materials; (2) fixed mark-ups if services are sub-contracted; (3) more control over providers, i.e. transparency in their dealings with sub-providers and more details on their costs breakdown (here questions of commercial secrecy must be addressed but not serve as an excuse); (4) the right to audit providers if any corruption suspicions emerge; and (5) advance payments only in order to purchase equipment (in which case equipment should be pledged as collateral to secure the advance payment). Further guidance should be drawn from the OECD Recommendation on Public Procurement, the OECD Recommendation on Fighting Bid-Rigging in Public Procurement and related good practice guides and checklists.

6. *Empower the Supervisory Board to appoint and dismiss the Chief Compliance Officer and ensure a direct reporting line of the CCO to the Board.* While a new compliance office has been recently established, it “should operate with an adequate level of autonomy from management, resources and authority”, according to the OECD Anti-Bribery Convention and its accompanying Good Practice Guidance on Internal Controls Ethics and Compliance. To reinforce the autonomy of the CCO position, good practice would call for the powers to appoint and dismiss the CCO to lie with the Supervisory Board and for the CCO to report directly to the Supervisory Board instead of to the CEO, as it is currently the case. The Board should ensure oversight of business integrity functions and policies within the company. In the case of Ukrenergo, the oversight of the compliance function might be delegated to the existing audit committee or to a new committee that would ensure that integrity and ethics receive enough support and board attention. The compliance function should serve as a coordinating body for preventing misconduct across the company, operating in tandem with legal, internal audit, human resources, purchasing, market analysis and price controls, procurement and other elements of the company whose functions are related to the integrity programme.
7. *Build up the internal audit and risk management capacity and ensure it develops linkages with the existing system of internal controls.* The recently appointed internal auditor is a welcomed development, including its direct reporting line to the Supervisory Board. The internal audit function should be resourced and staffed to begin internal auditing as soon as is feasible. The internal audit unit should ensure that it coordinates with the Chief Compliance Officer and other relevant divisions to change the integrity culture and ensure appropriate tone from the top. The internal audit and controls systems should also work together to build integrated risk management systems that break existing silos. It is considered good practice for the External and Internal auditors to regularly exchange information, and to hold meetings or discussions, especially if specific problems arise.
8. *Establish a risk assessment of compliance risks related to the launch of the new electricity market.* A risk assessment related to launch of new market segments should be addressed by relevant departments of Ukrenergo. The company should avoid dividing business integrity policies and functions by risk category – as is currently the case. As far as the OECD assessment team is aware, compliance with the electricity market and any risks arising therefrom, are currently not addressed by the compliance function. Not only does this incur increased compliance costs for maintaining separate functions but it also comes at the risk that potential misconduct may be overlooked if brought to the attention of the function not responsible for the type of misconduct in

question. Some of the risk areas that may be addressed include each of the new functions that Ukrenergo has taken on in the new market, such as dispatching in the balancing market. Apparently, decisions on balancing are not yet accorded through the principle of “merit order” which can potentially open doors to market manipulations and corruption risks. This situation is potentially exacerbated by a lack of a developed ancillary services market. Identifying potential risk areas where there is scope for undue intervention in the functioning of the market should be avoided at all costs.

Annex A. Responsibilities of Ukrenergo's governing bodies (excerpts from the October 2019 Charter)

The General Meeting

10.9. The exclusive competence of the General Meeting shall include:

10.9.1. determining the main areas and setting clear goals of the Company's activity upon the submission by the Company's Supervisory Board;

10.9.2. approving the Company's ownership policy in accordance with the legislation of Ukraine;

10.9.3. amending the Charter of the Company upon the submission by the Company's Supervisory Board;

10.9.4. resolving on changing the type of the Company;

10.9.5. resolving on the procedure for convening a general meeting;

10.9.6. approving the Company's development plan (including the strategic plan and investment plan) upon the submission by the Company's Supervisory Board;

10.9.7. approving the principles (code) of corporate governance of the Company;

10.9.8. reviewing and approving the Company's draft financial plan, prepared by the Management Board and approved by the Supervisory Board of the Company, taking into account the approved tariff structure;

10.9.9. approving the annual report of the Company;

10.9.10. distribution of profits and losses of the Company taking into account the requirements stipulated by the law of Ukraine and this Charter ;

10.9.11. reviewing the proposals of the Supervisory Board and the Management Board regarding the size, manner and terms of payment of dividends, deciding on the amount of annual dividends with regard to the requirements stipulated by the law of Ukraine and this Charter ;

- 10.9.12. approving the regulations on the General Meeting, Supervisory Board, as well as amendments thereto, upon the submission by Supervisory Board of the Company;
- 10.9.13. appointing and (or) electing the members of the Supervisory Board, resolving on terminating the powers of the members of the Supervisory Board, except in cases established by the law;
- 10.9.14. approving the terms and conditions of civil contracts to be concluded with the members of the Supervisory Board, determining their remuneration in line with the law of Ukraine, electing the person authorised to sign contracts with the members of the Supervisory Board upon the submission by the Management Board of the Company;
- 10.9.15. approving the regulation on remuneration of the Company's Supervisory Board Members;
- 10.9.16. approving the report on remuneration of the Company's Supervisory Board Members;
- 10.9.17. establishing the performance indicators of the Supervisory Board of the Company, taking into account the Company's clear objectives, determined in accordance with the law of Ukraine;
- 10.9.18. evaluating the results of activity of the Supervisory Board of the Company based on the Supervisory Board performance indicators, and presenting the results of such evaluation to the Supervisory Board of the Company in order to increase the efficiency of the work of the Supervisory Board of the Company;
- 10.9.19. resolving on the consequences of reviewing the report of the Supervisory Board;
- 10.9.20. considering the external audit findings and approving the follow-up measures;
- 10.9.21. adopting a decision based on the findings of the Supervisory Board's report;
- 10.9.22. resolving on granting consent to enter into a significant transaction, or preliminary consent to enter into a significant transaction, and entering into an interested-party transaction in cases prescribed by the law, upon the submission of the Supervisory Board and (or) the Management Board of the Company;
- 10.9.23. granting consent on the disposition of the ownership right, or portion thereof, of the Company included in the Company's authorised capital, namely, the right of economic management of the assets in the main and interstate power grids and property providing the integrity of the integrated power system of Ukraine and dispatch (operational and technical) control – the property is not subject to privatisation, in accordance with the Ukrainian law, upon submission of the Supervisory Board and (or) the Management Board;
- 10.9.24. resolving on placing the shares;
- 10.9.25. resolving on non-exercise by the shareholders of the superior right to purchase additionally issued shares at their placement;
- 10.9.26. resolving on the Company's redemption of the shares placed by the Company, except in cases stipulated by the Ukrainian law,
- 10.9.27. resolving on cancelling the redeemed shares;
- 10.9.28. resolving on splitting or consolidating the shares;
- 10.9.29. resolving on placing the securities that may be converted into the shares;
- 10.9.30. resolving on increasing the authorised capital of the Company;
- 10.9.31. resolving on reducing the authorised capital of the Company;

10.9.32. resolving on the spin-off and termination of the Company, liquidation of the Company, electing the liquidation commission, approving the procedure and terms of liquidation, the procedure for distribution among the shareholders of the property remaining after the settlement of the creditors' claims, and approving the liquidation balance sheet;

10.9.33. electing the commission on the termination of the Company;

10.9.34. resolving other issues that fall within the exclusive competence of General Meeting in accordance with the law or this Charter.

The Supervisory Board

11.13. The exclusive competence of the Supervisory Board of the Company shall include:

11.13.1. approving internal regulations governing the activities of the Company, except those that fall within the exclusive competence of the General Meeting under the law, and those that were submitted by the Supervisory Board for approval by the Company's Management Board;

11.13.2. approving the principles and rules (code) of ethical conduct of the Company officials and staff;

11.13.3. review and approval of the policy of corporate social responsibility and sustainable development, strategy submitted by the Management Board;

11.13.4. review and approval of the Company's compliance policy submitted by the Management Board;

11.13.5. review and approval of the Company's development plan (including the strategic plan and investment plan) submitted by the Management Board, their submission to the General Meeting for further review according to this Charter ;

11.13.6. approval of the Company's financial plan submitted by the Management Board of the Company, its submission to the General Meeting for further review according to this Charter ;

11.13.7. resolving on selling the shares previously redeemed by the Company;

11.13.8. resolving on placement of securities other than shares by the Company upon the submission by the Company's Management Board;

11.13.9. making decisions on the redemption of other securities, except for the shares, placed by the Company;

- 11.13.10. approving the market value of property in cases stipulated by the Ukrainian law;
- 11.13.11. resolving on granting consent to enter into a significant transaction or on granting a preliminary consent to enter into such transaction, and on granting consent to enter into a interested-party transaction in cases stipulated by the Ukrainian law, upon the submission by the Company's Management Board;
- 11.13.12. electing, appointing, terminating the powers, suspending the Chairman of the Management Board, electing a person temporarily exercising the powers of the Chairman of the Management Board of the Company, in cases other than a temporary absence of the Chairman of the Management Board (holiday, business trip, temporary disability, etc.);
- 11.13.13. electing, appointing, terminating the powers, suspending members of the Management Board, upon the submission by the Chairman of the Company's Management Board;
- 11.13.14. approving the terms and conditions of the contracts to be concluded with the Chairman of the Company's Management Board, establishing the amount of his/her remuneration, concluding and terminating, on behalf of the Company, the contract with him/her. The contract with the Chairman of the Company's Management Board and agreements on their replacement or termination shall be concluded by the Chairman of the Supervisory Board based on the corresponding resolution of the Supervisory Board;
- 11.13.15. approving the terms and conditions of the contracts to be concluded with the members of the Management Board, establishing the amount of their remuneration, concluding and terminating, on behalf of the Company, the contract with them, upon the submission by the Chairman of the Company's Management Board. The contracts with members of the Management Board and agreements on their replacement or termination shall be concluded by the Chairman of the Supervisory Board based on the corresponding resolution of the Supervisory Board;
- 11.13.16. approving the provision on remuneration to the Company's Management Board members;
- 11.13.17. approving the report on remuneration to the Company's Management Board members;
- 11.13.18. establishing the performance indicators of the Management Board and the Chairman of the Management Board, taking into account the clear objectives of the Company set by the General Meeting in accordance with the Ukrainian legislation and this Charter, strategy, development plan (including strategic plan and investment plan), enforcing and assessing performance of the Company and the Management Board in accordance with these indicators;
- 11.13.19. monitoring the Management Board's activities and assessing its performance;
- 11.13.20. analysing and assessing the activities of the Chairman of the Management Board in management of the Company, implementation of the investment, technical and pricing policies, and other actions to control the activities of the Chairman of the Management Board;
- 11.13.21. reviewing the report of the Management Board and approving the measures following the review;
- 11.13.22. taking a decision based on the results of reviewing the Management Board's report;
- 11.13.23. electing and terminating the powers of a Chairman and Deputy Chairman of the Supervisory Board, chairmen and members of the Supervisory Board Committees, approving the regulations on the Supervisory Board Committees;
- 11.13.24. drawing up an annual report on the results of its activities, assessing the work of the members of the Supervisory Board and corporate governance quality;
- 11.13.25. reviewing the measures approved by the General Meeting following the review of the report of the Supervisory Board in order to increase the Supervisory Board's performance;

- 11.13.26. reviewing the measures approved by the General Meeting following the review of external audit findings in order to increase the performance of Supervisory Board and the Company;
- 11.13.27. taking a decision to conclude voluntary liability insurance contracts with the Chairman of the Management Board and the members of the Supervisory Board of the Company, appointing the members of the Supervisory Board, whose liability will be insured in accordance with the voluntary insurance contracts, appointing the payer of the insurance contract premium and defining the maximum amount of expenses for payment of the premium under the insurance contract;
- 11.13.28. selecting and terminating the powers of the Corporate Secretary, whose powers are stipulated by this Charter and the regulation on the Supervisory Board of the Company;
- 11.13.29. deciding on the selection (replacement) of the depositary institution, which provides additional services to the Company, approving the terms and conditions of the contract to be concluded with such depositary institution, determining the amount of its remuneration;
- 11.13.30. determining the forms of control over financial and economic activities of the Company, efficient management of the Company and efficient risk management, exercising such control and initiating, if needed, relevant measures before the General Meeting;
- 11.13.31. setting up the internal audit service, approval of the terms of labour contracts concluded with the employees of the internal audit unit, determining their remuneration, including compensation and incentive payments, upon the submission of the Management Board of the Company;
- 11.13.32. appointing and dismissing the head of the internal audit unit (the Internal Auditor);
- 11.13.33. selecting the auditor (audit company) of the Company to conduct an audit of the current and/or previous year(s) results and determining the terms and conditions of the contract to be concluded with such auditor (audit company) and the amount of their remuneration;
- 11.13.34. approving recommendations to the General Meeting after considering the findings of an external independent auditor (audit company) of the Company to make a decision thereon;
- 11.13.35. deciding on the selection of the appraiser of the Company's property and approving terms and conditions of the agreement to be concluded with such appraiser, determining the amount of his/her remuneration upon the submission of the Management Board of the Company by approving the main provisions of the terms of reference and approving the results of the selection conducted in accordance with the requirements of the Ukrainian legislation on public procurement;
- 11.13.36. approving the appointment and dismissal of the head of the authorised unit (person) for preventing and detecting corruption (person responsible for implementation of the Anti-Corruption Programme of the Company (Compliance Officer));
- 11.13.37. approving the Regulation on the Risk Manager and the Company's risk management programme;
- 11.13.38. Deciding on the Company's participation in industrial and financial groups and other associations, upon the submission of the Management Board of the Company;
- 11.13.38. deciding, upon the submission of the Management Board of the Company, on establishing, reorganisation, change of the location, liquidation (suspension, closure) of legal entities where the Company is a cofounder or participant;
- 11.13.39. deciding, upon the submission of the Management Board of the Company, on establishing, reorganisation, change of the location, liquidation (suspension, closure) of subsidiaries, branches, representative offices, other structural and(or) separate units of the Company;

11.13.40. approval of the Company's organisational structure in respect of the subordination of the separate and structural units of the Company, directly managed by the Management Board of the Company;

11.13.41. resolving the issues falling within the competence of the Supervisory Board in accordance with the Ukrainian law in case of merger, accession, split-up, spin-off or transformation of the Company;

11.13.42. determining, upon the submission of the Management Board of the Company, the probability of the Company's being recognizing insolvent due to the assumption or discharge of obligations, including as a result of payment of dividends;

11.13.43. resolving other issues within the exclusive competence of the Supervisory Board in accordance with the Ukrainian law or this Charter.

11.14. By the decision of the General Meeting, the Supervisory Board may decide on certain issues that fall within the competence of the General Meeting, except those that fall under the exclusive competence of the General Meeting

The Management Board

12.9. The competence of the Management Board of the Company shall include:

12.9.1. disposing of the assets and funds of the Company, taking into account the restrictions established by the legislation and this Charter;

12.9.2. deciding on the issues of organisation of economic activity of the Company in accordance with its purpose and activity areas;

12.9.3. approving the organisational chart of the Company;

12.9.4. in agreement with the Supervisory Board, approving the regulation on the chief risk management officer and the risk management programme of the Company;

12.9.5. appointing and dismissal of the chief risk management officer of the Company;

12.9.6. approval of the charters of legal entities, of which the Company is the founder, co-founder or participant, deciding on the change of their location, deciding on the election, appointment, termination of powers of their management bodies (heads), making other decisions regarding the activities of such legal entities;

12.9.7. selecting, appointing and terminating the powers of the Management Bodies (executives) of the subsidiaries, branches, representative offices, other separate subdivisions of the Company, deciding on the change of their place of location, approval of regulations, other decisions concerning the activity of separate subdivisions of the Company;

12.9.8. Providing to the General Meeting and the Supervisory Board of the Company, for taking appropriate decisions in accordance with this Charter, proposals on the following:

12.9.8.1. Identifying the main directions and establishing clear goals of the Company's activity;

12.9.8.2. Amending the Charter of the Company;

12.9.8.3. Consent to commit a substantial transaction or to give prior consent to such a transaction and/or consent to a transaction of interest in cases provided for by the law and this Charter;

12.9.8.4. The amount of annual dividends, in line with the Ukrainian law and this Charter;

12.9.8.5. Terms of civil contracts, labour agreements (contracts) to be concluded with members of the Supervisory Board of the Company, their remuneration, the person authorised to sign contracts with members of the Supervisory Board;

12.9.9. Submission for consideration and approval in accordance with this Charter of draft regulations on the General Meeting, the Supervisory Board, draft amendments thereto;

12.9.10. Preliminary consideration of issues to be discussed at meetings of the Supervisory Board, ensuring preparation of materials necessary for consideration of such issues:

12.9.10.1. Implementation of the decisions of the General Meeting and the Supervisory Board;

12.9.10.2. Preparation of the report of the Management Board and its submission for review and approval to the Supervisory Board of the Company;

12.9.11. For decision-making, submitting to the Supervisory Board of the Company of proposals on the issues of:

12.9.11.1. Placement by the Company of securities other than shares;

12.9.11.2. Redemption of securities placed by the Company other than shares;

12.9.11.3. Establishment of the internal audit unit, approval of the terms of labour contracts concluded with the employees of the internal audit unit, determination of the amount of their remuneration, including incentive and compensation payments;

12.9.11.4. Selecting an auditor (audit firm) of the Company to audit the results of the current and/or past year (years) and determine the terms of the contract to be concluded with such auditor (audit firm), establishing the amount and manner of remuneration for his (her) services;

- 12.9.11.5. Setting up, reorganisation, liquidation (termination, closure) of legal entities, of which the Company is the founder, co-founder or participant;
- 12.9.11.6. Setting up, reorganisation, liquidation (termination, closure) of the subsidiaries, branches, representative offices, other separate subdivisions of the Company;
- 12.9.11.7. Selecting the valuer of the Company's assets, approval of the terms of the contract to be concluded with them, determination of the amount of payment for their services;
- 12.9.11.8. Participation of the Company in industrial and financial groups and other associations;
- 12.9.11.9. Determining the probability of the Company being declared insolvent as a result of undertaking or fulfilling obligations, including as a result of payment of dividends or redemption of shares;
- 12.9.12. Submission to the Company's Supervisory Board for taking appropriate decisions (agreeing, approval, adoption), in accordance with this Charter, drafts of the following:
 - 12.9.12.1. Financial plan, strategy, development plan (including strategic plan) of the Company;
 - 12.9.12.2. Corporate Social Responsibility and Sustainable Development Policies of the Company, Compliance Policy, main directions and clear goals of the Company's activities;
- 12.9.13. exercising other powers imposed on the Management Board by the resolution of the Supervisory Board;

Annex B. Draft Ownership policy of Ukrenergo (as of November 2019)

The Ownership Policy of PRIVATE JOINT STOCK COMPANY NATIONAL POWER COMPANY UKRENERGO

1. General provisions

From July 29, 2019, PRIVATE JOINT STOCK COMPANY NATIONAL POWER COMPANY UKRENERGO (hereinafter – the Company) is a legal entity formed as a joint stock company with 100% of the stock owned by the state as a result of reorganisation by transformation of the state enterprise National Power Company Ukrenergo into a private joint stock company in accordance with the Order of the Ministry of Finance of Ukraine No. 73 dated February 15, 2019, and the Order of the Cabinet of Ministers of Ukraine No. 829-p dated November 8, 2017 On Approval of Transformation of State Enterprise National Power Company Ukrenergo into a Private Joint Stock Company. The founder and sole shareholder of the Company is the state represented by the Ministry of Finance of Ukraine. The Company's shareholder owns 37 160 209 (thirty-seven million one hundred and sixty thousand two hundred and nine) ordinary registered shares, which is 100 percent of the share capital of the Company.

The Company is a transmission system operator, settlement administrator and administrator of commercial metering of electricity.

The main purpose of the Company's activity is ensuring security of electricity supply in the most cost-effective way.

This ownership policy defines:

1. main objectives and priorities, according to which the state owns the Company;
2. basic principles and mechanisms of management of the Company;
3. expected results of the Company's activity in 2020-2024.

2. Objectives and priorities, according to which the state manages the Company

Pursuant to paragraph 2, Part 2, Article 4 of the Law of Ukraine “On Privatisation of State and Communal Property”, the property that ensures the integrity of the integrated power system of Ukraine and dispatch (operational and technological) control, trunk and interstate power grids is referred to facilities necessary for the state to perform its basic functions, ensuring the defence capability of the state, objects of the property right of the Ukrainian people and property, which constitutes the material basis of the sovereignty of Ukraine, and accordingly is not subject to privatisation.

The aforementioned property is secured by the Company on the right of economic management. The Company uses the state property assigned to it, taking into account its intended purpose, as well as restrictions on the powers to dispose of such property, determined by the law and the Charter of the Company.

The state, as the owner of the Company represented by the Ministry of Finance of Ukraine as an authorised body of the Company's Management – the General meeting, establishes that the main objectives and priorities, according to which the Ministry of Finance carries out the functions of managing

the Company are, in particular:

a) performance of special functions:

- implementation of dispatch (operational and technological) control of the modes of operation of the integrated power system of Ukraine;
- ensuring a balance of electricity production and consumption in the country;
- ensuring operational security of the integrated power system of Ukraine;
- maintenance of the electric power transmission network, maintenance of its operational readiness and development;
- ensuring integration of the Ukrainian electricity market into the European one;
- planning the modes of operation of the integrated power system of Ukraine.

b) commercial activity:

- provision of electricity transmission services and dispatch (operational and technological) control;
- provision of services for connection to the electricity transmission network;
- provision of commercial electricity metering services;
- provision of other services.

The priorities, under which the state owns the Company, are aimed at improving the quality of service provision through the modernisation of fixed assets, including the implementation of programmes of capital construction, technical re-equipment and reconstruction of the trunk and interstate power grids that will create conditions for improving efficiency and reducing operating costs, ensuring the security of electricity supply and reliability of the functioning of the integrated power system of Ukraine.

1. increasing the value of assets managed by the Company, in particular, by enhancing the investment attractiveness implemented as a result of such requirements:
 - ensuring effective and efficient economic and financial activities of the Company in the long term; minimising expenses for performing the functions assigned to the Company due to the automation of operations;
 - conducting a reasonable and predictable dividend policy;
 - ensuring transparency, reporting and quality disclosure of the Company's activities;
2. increasing efficiency and maintaining reliability of the power grid and the functioning of the integrated power system of Ukraine, the state, as the owner, provides the necessary support in attracting foreign capital to finance investments.
3. providing and improving Ukraine's energy security by:
 - preserving and developing industrial and human resources,
4. ensuring proper contribution to the creation of a competitive electricity market.

3. General principles of management of the Company

The state represented by the authorised governing body, the Ministry of Finance of Ukraine, manages the Company in accordance with the general principles of management of public sector economic entities, to which belong:

- exclusivity of state property;
- definition of clear goals of the Company's activity;
- parity in the regulation of public and private companies;
- separation of functions of state bodies into functions of the owner, the regulator, and development and implementation of state policy in the energy sector;
- professionalism in managing the Company;
- maintaining transparency in the functioning of the Company;
- corporate social responsibility and sustainable development of the Company.

4. Mechanisms for implementation of management principles

Exclusivity of state property

In accordance with the principle of state property exclusivity, based on the results of the analysis of the functions of the Companies belonging to the sphere of management of the Ministry of Finance of Ukraine, it is advisable for the Company to stay in the state ownership in view of the importance of performing the functions assigned to the Company.

According to Article 4 of the Law of Ukraine "On Privatisation of State and Communal Property", the property that ensures the integrity of the integrated power system of Ukraine and dispatch (operational and technological) control, trunk and interstate power grids is not subject to privatisation.

According to Article 33 of the Law of Ukraine "On Electricity Market", the functions of the transmission system operator (hereinafter – the TSO) are:

- ensuring non-discriminatory access to the transmission network;
- ensuring non-discriminatory treatment of transmission network users;
- provision of electricity transmission services on a non-discriminatory basis in accordance with the requirements established by this Law and the transmission network code in compliance with the established quality indicators for the provision of services;
- providing transmission network connection services in accordance with this Law and the transmission network code;
- maintenance of the transmission network, its operational readiness and development in order to ensure long-term demand for electricity transmission taking into account the requirements for the reliability and efficiency of the transmission network and environmental protection;
- providing adequate transmission capacity and reliable transmission network;
- performing dispatch (operational and technological) control of the modes of operation of the IPS of Ukraine in accordance with this Law, the transmission network code, and other regulations governing the functioning of the electricity market;
- ensuring the operational security of the IPS of Ukraine;
- planning the modes of operation of the IPS of Ukraine in accordance with market rules and the transmission network code;
- receipt and acceptance of daily electricity schedules of market participants;
- acquisition of market balancing services on a non-discriminatory and transparent basis, and ensuring the functioning of the balancing market in accordance with the procedure established by this Law, market rules and the transmission network code, as well as the purchase and sale of electricity imbalances;
- analysing system constraints and regulating them with non-discriminatory methods based on market mechanisms in accordance with market rules and the transmission network code;
- ensuring the operation of the ancillary services market and the acquisition of ancillary services in order to comply with the operational security of the IPS of Ukraine;
- monitoring the fulfilment of ancillary service providers' obligations;
- allocating capacity of interstate crossings in accordance with the procedure established by this Law and the procedure for the allocation of capacity of interstate crossings;
- interacting with the transmission system operators of adjacent states, coordinating and exchanging information with them;
- developing market rules, transmission network code, commercial metering code, constraints management rules, interstate capacity allocation order and submitting them to the Regulator for approval;
- preparing a plan for the development of the transmission network for the next 10 years, assessing the sufficiency of the generating capacity to meet the forecast demand and providing necessary reserve, and submitting them to the Regulator for approval;

- ensuring the management of the modes of parallel operation of the IPS of Ukraine with the energy systems of adjacent states;
- ensuring commercial electricity metering and exchange of commercial metering data in accordance with this Law, market rules and commercial metering code, other normative legal acts and regulations governing the functioning of the electricity market;
- providing market participants with the information necessary for effective access to the transmission network and the performance of their functions in the electricity market in the scope and manner defined by market rules, transmission network code, commercial metering code and other regulatory acts governing the functioning of the electricity market;
- analysing costs for electricity transmission and measures for their reduction;
- performing special duties to ensure the common interest in the functioning of the electricity market;
- exercising other functions stipulated by this Law and other regulations governing the functioning of the electricity market.

Defining clear goals of the Company's activities

The state, as the owner, ensures that the Company has an active role in the development of an effective electricity market in Ukraine through adoption of the Company's corporate governance principles (code), definition of the Company's main strategic objectives.

In line with the principle of defining the Company's clear goals, such goals are set annually by December 15 by the decision of the General Meeting, with due regard of the main types of the Company's economic activity and the provisions of the Law of Ukraine "On Electricity Market".

Regulatory parity for public and private companies, except for activities related to the achievement of non-profit goals

In accordance with the principle of parity, the Authorised Management Body manages the Company in strict compliance with the requirements of the law, looking to the international standards of corporate governance.

The state, as the owner, seeks to increase the value of the Company's assets owned and managed by the Company for the people of Ukraine, in particular by enhancing their investment attractiveness by:

- ensuring the effectiveness of the Company's operating activities following the guidelines established by the Supervisory Board;
- ensuring financial sustainability and improvement of the company's financial results, including through the following:
 - rationality, predictability and flexibility of dividend policy;
 - transparency, reporting and openness of information to standards not lower than those applicable to private (non-state) power companies.

The state, as the owner, recognises that the Company activities should take into account and agree with the interests of all interested parties (including creditors, suppliers, consumers, employees of the Company, as well as local communities) that are affected by the Company's activities.

Differentiation of roles of owner and regulator; making and implementing state energy policy

Taking into account the internationally recognised principles of corporate governance and in line with the principle of differentiation between the roles of the regulator and the Authorised Management Body, the state, represented by the Authorised Management Body, performs the functions of managing the objects of state-owned property based on the following basic principles:

- separation of functions of managing the objects of state-owned property from other functions, in particular, the regulatory function and the social policy function;
- as far as managing the objects of state-owned property, in relation to the Company, the state, represented by the Authorised Management Body, acts as the owner – through the General Meeting, taking into account the powers granted by the law and the Company Charter, and in other cases – within the limits of powers and in the manner provided for by the Ukrainian law;
- prohibition of the Authorised Management Body's unlawful interference, its officials in the Company's economic activity;
- consistent implementation of best practices in the Company's governance;
- stipulating in the Company Charter a clear division of powers between its bodies, respecting the principle of avoiding duplication of powers.

Main governance mechanisms include:

- defining main directions of the Company's activities;
- adoption of a separate policy for the Company property;
- defining clear goals and key performance indicators for the Company;
- amending the constituent documents, in particular as regards the distribution of powers of the Authorised Management Body and the Supervisory Board;
- election and termination of powers of the Supervisory Board members, approval of the By-Law of the Supervisory Board;
- other powers specified by law and constituent documents.

The state's corporate rights in the Company's authorised capital are managed by the Ministry of Finance of Ukraine.

Corporate governance follows these basic principles:

- in corporate relations with respect to the Company, the state, represented by the Ministry of Finance of Ukraine, acts as a shareholder, taking into account the powers conferred by law and the Company Charter, in other cases the Ministry of Finance of Ukraine acts on the basis, within the powers and in the manner prescribed by the law;
- prohibition of unlawful interference by the state bodies', its officials in the Company's economic activity;
- consistent implementation of best practices in the Company's governance.

Professionalism in the Company governance

In accordance with the principle of professionalism in the management of the Company, the state, in the person of the authorised management body, establishes a qualified and independent supervisory board of the Company in accordance with the requirements of the legislation of Ukraine.

Direct supervision of the Company's activities is carried out by its Supervisory Board, which protects the rights of the owner and, in accordance with the competence defined by law and the charter, controls and regulates the activities of the head of the Company.

The Company's current activities are managed by its management board, which reports to the supervisory board and implements its decisions.

Property policy is also implemented by granting full operational autonomy to the Company and broad powers to the supervisory board, in particular:

- the principles of interaction between the authorised management body and the Company, including its supervisory and management board, are equivalent to the principles of interaction of shareholders of a private (not state-owned) company with such companies, including its supervisory and management board;
- the state exercises its right as the owner to appoint and dismiss the supervisory board;
- the activities and decisions of the supervisory board and the management board are based solely on the interests of the Company;
- The ultimate responsibility for the performance of the functions rests with the supervisory board.

Functioning while maintaining transparency

In accordance with the principle of transparent functioning, the Company shall be public – the Company reports on its activities in accordance with the Law of Ukraine "On Accounting and Financial Reporting in Ukraine", Resolution of the Cabinet of Ministers of Ukraine of 09.11.2016 No. 1067 "On Approval of the Procedure for Publication of Information on the Activities of State Unitary Societies and Business Companies, more than 50 Percent of Shares (Stake) in the Authorised Capital of which Is Owned by the State, and also of Companies, 50 or more Percent of Shares (Stake) is Owned by Business Companies with 100 percent of Share Owned by the State" and holds an independent audit of financial statements in accordance with international auditing standards, including by internationally recognised audit firms, in cases provided for by the legislation of Ukraine.

Information on the activities of the Company is published on the Company's official website and may be published on the official website of the Authorised Management Body and other state authorities.

Social responsibility of the Company

Ensuring the principle of corporate social responsibility prescribes for the Company's governing bodies to take all necessary measures to:

- create optimal conditions for work, development and fulfilment of personnel's potential;
- prevent discrimination in employment relations;
- ensure energy efficiency;
- minimise harmful effects on the environment;
- restrict any cooperation with Companies, institutions and organisations that are residents of the state recognised by the Verkhovna Rada of Ukraine as an aggressor state.
- Principles of Sustainable Development of the Company
- Sustainable development is a source of success, innovation and profitability, therefore the

Company shall adhere to the following principles:

- creation of conditions for sustainable development of the Ukrainian economy by ensuring the functioning of a competitive electricity market
- creation of conditions for sustainable technological development
- compliance with corporate values
- improvement of operational efficiency
- development of environmental sector of activities
- implementation of the compliance-policy
- energy efficiency

5. Expected results of the Company's activities

The main expected results of the Company's activities are as follows:

- provision of development and modernization of the main electric grids with voltage of 220-750 kV of the Integrated Power System of Ukraine;
- ensuring long-term comprehensive operation of the Integrated Power System of Ukraine;
- integration of the Integrated Power System of Ukraine into ENTSO-E (European Network of Transmission System Operators for Electricity);
- financial sustainability and optimisation of the Company's calculation tariff.

Bibliography

- Boysun, A. (2017), *Ukrenergo: Corporate governance report*. [31]
- Cabinet of Ministers of Ukraine (2017), *On approval of the Energy Strategy of Ukraine for the period up to 2035 "Security, energy efficiency, competitiveness*, <https://www.kmu.gov.ua/> (accessed on 17 April 2020). [25]
- CMS Law (2017), *Ukraine: Electricity Market liberalised to meet the EU 3rd Energy Package requirements*, <https://www.lexology.com/library/detail.aspx?q=8b4291f1-d65d-4f42-baa7-d6d187123b27> (accessed on 2 April 2020). [14]
- Deloitte (2019), *Auditor's Report 2019*, <http://www.deloitte.com/about>. [35]
- Deloitte (2018), *Independent Audit's Report 2018*, https://ua.energy/wp-content/uploads/2019/05/Ukrenergo_18fse_with-signatures.pdf (accessed on 31 July 2019). [33]
- Deloitte (2017), *Auditor's report*, <https://ua.energy/wp-content/uploads/2018/05/Ukrenergo-17ang.pdf> (accessed on 9 April 2020). [34]
- DTEK (2019), *DTEK's Production Indicators for Q1 2019*. [69]
- DTEK (2018), *DTEK Oil & Gas*, <https://oilandgas.dtek.com/en/> (accessed on 2 April 2020). [70]
- Energorynok (2019), *Analysis of prices on the Wholesale Electricity Market in April 2019*, <http://www.er.gov.ua/doc.php?f=4661> (accessed on 2 April 2020). [16]
- Energy Community Secretariat (2020), "Opinion 1/20 pursuant to Article 3(1) of Regulation (EC) No 714/2009 and Article 10(6) of Directive 2009/72/EC – Ukraine – Certification of Ukrenergo". [68]
- Energy Community Secretariat (2019), *The National Energy Regulatory Authority of Ukraine Governance and Independence : An Update of the Energy Community Secretariat's Review of March 2018*, <http://www.energy-community.org>. [73]
- Energy Community Secretariat (2019), *Ukrainian wholesale electricity market opening: 53% of electricity generation traded on the free market, but reforms may be at risk*, <https://energy-community.org/news/Energy-Community-News/2019/09/05.html> (accessed on 2 April 2020). [9]
- Energy Community Secretariat (2019), *Ukrainian wholesale electricity market opening: 53% of electricity generation traded on the free market, but reforms may be at risk*, <https://energy-community.org/news/Energy-Community-News/2019/09/05.html> (accessed on 2 April 2020). [22]
- Energy Community Secretariat (2018), *The National Energy Regulatory Authority of Ukraine: Governance and Independence. An Energy Community Secretariat Review*, [27]

- <http://www.energy-community.org>.
- EUROSAI (2018), *Overview of External Audit Systems in Local Government*, [45]
http://www.eurosaio.org/docs/upload/documents/TFMA_Overview_external_audit_systems_2018_1555656170.pdf (accessed on 20 August 2019).
- Expro Consulting (2019), "Round Table: Risks and Benefits of Implementation of New Electricity Market —", [40]
<https://expro.com.ua/en/events/round-table-risks-and-benefits-of-implementation-of-new-electricity-market> (accessed on 12 August 2019).
- Government Portal (2018), *Cabinet of Ministers approves members of the Supervisory Board of Ukrenergo* | Cabinet of Ministers of Ukraine, [56]
<https://www.kmu.gov.ua/en/news/uryad-pogodiv-kandidaturi-chleniv-naglyadovoyi-radi-ukrenergo> (accessed on 7 August 2019).
- Government Portal (2018), *Government announces the Selection for the Position of Independent Member of the Supervisory Board of State-owned Enterprise Ukrenergo National Power Company* | Cabinet of Ministers of Ukraine, [30]
<https://www.kmu.gov.ua/en/events/ogoloshennya-pro-provedennya-vidboru-na-posadu-nezalezhnogo-chlena-naglyadovoyi-radi-derzhavnogo-pidpriyemstva-nacionalna-energetichna-kompaniya-ukrenergo> (accessed on 25 July 2019).
- Government Portal (2018), "The Ministry of Economic Development developed a policy ownership for the public sector", [54]
<https://www.kmu.gov.ua/ua/news/minekonomrozvittku-rozrobilo-politiku-vlasnosti-u-derzhavnomu-sektori-ekonomiki> (accessed on 11 August 2019).
- Guaranteed Buyer (2019), *Guaranteed Buyer Continues Payments to Green Electricity Producers*, [26]
<https://www.gpee.com.ua/main/news?id=182> (accessed on 17 April 2020).
- IEA (2018), *Natural Gas Information 2018*, International Energy Agency, Paris, [12]
https://dx.doi.org/10.1787/nat_gas-2018-en.
- IEA (2006), *Ukraine Energy Policy Review 2006*, OECD/IEA. [13]
- IMF (2016), *Ukraine : Technical Assistance Report-Regulation of Market Abuse and Issuer Disclosure Requirements*, [53]
<https://www.imf.org/en/Publications/CR/Issues/2016/12/31/Ukraine-Technical-Assistance-Report-Regulation-of-Market-Abuse-and-Issuer-Disclosure-44105> (accessed on 20 September 2019).
- Interfax (2018), *Ukrenergo seeks to switch to RAB tariffs from 2019*, [72]
<https://en.interfax.com.ua/news/economic/478866.html> (accessed on 17 April 2020).
- Kosatka.media (2019), "Swiss company will represent the interests of "Ukrenergo" against the Russian Federation for Crimean assets", *Kosatka.media*, [58]
<https://kosatka.media/en/category/elektroenergiya/news/shveycarskaya-kompaniya-budet-predstavlyat-interesy-ukrenergo-protiv-rf-za-krymskie-aktivy> (accessed on 28 August 2019).
- Kuzle, I. and D. Sabolić (2011), *Ancillary Services Market in the South East Europe*, [65]
<http://www.eem11.com/files/keynotes/KS%20EEM11%20Igor%20Kuzle%201.pdf> (accessed on 30 July 2019).
- Kyiv Post (2016), "Grigorishin, Lazarenko did business in 1990s", [49]
<https://www.pressreader.com/> (accessed on 20 September 2019).
- KyivPost (2019), "NCER allows Ukrenergo to work in new market under old license before [59]

- certification”, <https://www.kyivpost.com/business/ncer-allows-ukrenergo-to-work-in-new-market-under-old-license-before-passing-certification.html> (accessed on 26 July 2019).
- Low Carbon Ukraine (2019), *Monitor of Electricity Market Opening - August 2019*. [7]
- MDETA (2019), *Presentation*. [2]
- MEDT (n.d.), *Corporate Governance in State-owned Enterprises*, <http://me.gov.ua/Documents/Detail?lang=uk-UA&id=a3eae2dc-be3c-44ba-9f5f-03cc78bee793&title=KorporativneUpravlinniaVDerzhavnikhPidprimstvakh> (accessed on 4 February 2020). [3]
- Ministry of Energy, C. (2019), *Statistical indicators of the implementation of the Energy Strategy of Ukraine*. [17]
- Nashi Groshi (2015), *Ukrenergo between SBU and GPU*, <http://nashigroshi.org/2015/12/11/ukrenerho-mizh-sbu-i-hpu/> (accessed on 24 January 2020). [50]
- Nashi Groshi (2014), “Ex-deputy director of Ukrenergo to receive 18 million from Ukrenergo”, <http://nashigroshi.org/2014/08/08/menedzher-eks-zamdyrektora-ukrenerho-otrymaje-18-miljoniv-vid-ukrenerho/> (accessed on 24 January 2020). [51]
- NEURC (2018), *The volume of grants to compensate for the losses incurred for supplying electricity at regulated tariff for February 2018, National Energy and Utilities Regulatory Commission*, <http://www.nerc.gov.ua/data/filearch/postanovy/2018/p0125-d-2018.pdf> (accessed on 17 April 2020). [20]
- OECD (2019), *Enhancing Competitiveness in Ukraine through a Sustainable Framework for Energy Service Companies (ESCOs)*, <http://www.oecd.org/eurasia> (accessed on 26 August 2019). [8]
- OECD (2019), *Enhancing Competitiveness in Ukraine through a Sustainable Framework for Energy Service Companies (ESCOs)*, <http://www.oecd.org/eurasia> (accessed on 2 April 2020). [11]
- OECD (2019), *Snapshot of Ukraine’s Energy Sector: Institutions, Governance and Policy Framework*. [6]
- OECD (2019), *State-Owned Enterprise Reform in the Hydrocarbons Sector in Ukraine - OCDE*, <http://www.oecd.org/fr/gouvernementdentreprise/soe-review-ukraine-hydrocarbons.htm> (accessed on 28 August 2019). [1]
- OECD (2019), *State-Owned Enterprise Reform in the Hydrocarbons Sector in Ukraine - OECD*, <http://www.oecd.org/corporate/SOE-Review-Ukraine-Hydrocarbons.htm> (accessed on 22 August 2019). [28]
- OECD (2019), *Ukraine OECD Investment policy review*. [75]
- OECD (2019), *Ukraine: Electricity Market liberalised to meet the EU 3rd Energy Package requirements - Lexology*, <https://www.lexology.com/library/detail.aspx?g=8b4291f1-d65d-4f42-baa7-d6d187123b27> (accessed on 5 September 2019). [74]
- OECD (2018), *Anti-Corruption Reforms in Ukraine: Prevention and Prosecution of Corruption in* [5]

- State-Owned Enterprises*, <http://www.oecd.org>. (accessed on 25 July 2019).
- OECD (2018), *Inventory of Energy Subsidies in the EU's Eastern Partnership Countries*, Green Finance and Investment, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264284319-en>. [21]
- OECD (2018), *Maintaining the Momentum of Decentralisation in Ukraine*, OECD Multi-level Governance Studies, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264301436-en>. [15]
- OECD (2018), *State-owned enterprises and corruption : what are the risks and what can be done?*. [52]
- OECD (2016), *OECD Investment Policy Reviews: Ukraine 2016*, OECD Investment Policy Reviews, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264257368-en>. [4]
- OECD (2007), *OECD Economic Surveys: Ukraine 2007*, OECD Publishing, Paris, https://dx.doi.org/10.1787/eco_surveys-ukr-2007-en. [10]
- Official website of the President of Ukraine (2019), “Andriy Gerus: Following the meeting chaired by the President of Ukraine, mechanisms reducing electricity tariffs for non-domestic consumers almost by 20% have been elaborated”, <https://www.president.gov.ua/en/news/zarezultatami-naradi-pid-golovuvannyam-prezidenta-ukrayini-56873> (accessed on 6 September 2019). [38]
- Prozvvit.com.ua (n.d.), *Portal of State-owned Enterprises of Ukraine*, <https://prozvit.com.ua/#/> (accessed on 31 July 2019). [32]
- SAS (n.d.), *The State Audit Service of Ukraine*, <http://www.dkrs.gov.ua/kru/en/publish/article/131910> (accessed on 20 August 2019). [44]
- Secretariat of the Cabinet of Ministers of Ukraine (2015), *Report on implementation of the Association Agenda and the Association Agreement between the European Union and Ukraine*, <https://www.kmu.gov.ua/storage/app/media/zviti-pro-vikonannya/9maaaag-goei-report-january-october-2015-engfull-reportfinal.pdf> (accessed on 4 September 2019). [46]
- Sioshansi, F. (2008), *Competitive electricity markets*, Elsevier Ltd, <http://dx.doi.org/10.1016/B978-0-08-047172-3.X5001-6>. [67]
- Supponen, M. (2019), *Ukraine on the way to a functioning electricity market – what is in place, what is missing?*, Low Carbon Ukraine, Berlin, <http://www.lowcarbonukraine.com> (accessed on 13 August 2019). [41]
- Ukrenergo (2020), *Announcement of competitive selection of candidates for the position of CEO of NPC “UKRENERGO”*, <https://ua.energy/media-2/news/announcement-of-competitive-selection-of-candidates-for-the-position-of-ceo-of-npc-ukrenergo/> (accessed on 4 February 2020). [57]
- Ukrenergo (2019), *Court lifts suspension off Ukrenergo tariffs for dispatching and transmission for majority of market participants*, <https://ua.energy/media-2/news/court-lifts-suspension-off-ukrenergo-tariffs-for-dispatching-and-transmission-for-majority-of-market-participants/> (accessed on 17 February 2020). [39]
- Ukrenergo (2019), *Electricity Transmission tariff for Ukrenergo will be 10% lower since 1 August* [63]

- 2019, <https://ua.energy/media-2/news/electricity-transmission-tariff-for-ukrenergo-will-be-10-lower-since-the-1st-of-august-2019/> (accessed on 2 August 2019).
- Ukrenergo (2019), “Ruling on Ukrenergo tariffs precludes a new market model”, <https://ua.energy/main-events/ruling-on-ukrenergo-tariffs-makes-precludes-a-new-market-model/> (accessed on 2 August 2019). [62]
- Ukrenergo (2019), *Ukraine-EU Energy Bridge and Risks*, August, <https://ua.energy/media-2/news/construction-of-ukraine-eu-energy-bridge-poses-risks-for-ukraine-s-power-system-2/> (accessed on 29 August 2019). [19]
- Ukrenergo (2018), *2018 Non-Financial Report*, https://ua.energy/wp-content/uploads/2019/07/UE_NFR_2018_Eng.pdf (accessed on 24 July 2019). [36]
- Ukrenergo (2018), *Integration of energy units from Burshtyn Island*, February, <https://ua.energy/media-2/news/three-energy-units-burshtyn-tpp-will-operate-ukrainian-energy-system-first-time-15-years/> (accessed on 28 August 2019). [18]
- Ukrenergo (2018), “Official position of NPC Ukrenergo regarding the statement of the Ministry of energy and coal industry of Ukraine”, <https://ua.energy/main-events/official-position-of-npc-ukrenergo-regarding-the-statement-of-the-ministry-of-energy-and-coal-industry-of-ukraine/> (accessed on 28 August 2019). [64]
- Ukrenergo (2018), *Ukrenergo and Transition to the RAB Regulation*, <https://ua.energy/media-2/news/ukrenergo-transition-rab-regulation/> (accessed on 2 August 2019). [37]
- Ukrenergo (2018), “Ukrenergo tariff level for 2019 fails to cover all the company’s expenses - NPC "UKRENERGO" | NPC "UKRENERGO"”, <https://ua.energy/main-events/ukrenergo-tariff-level-for-2019-fails-to-cover-all-the-company-s-expenses/> (accessed on 6 September 2019). [60]
- Ukrenergo (2017), *Sustainability Report 2017*, https://ua.energy/wp-content/uploads/2018/07/UKRENERGO_NF_Report_2017_ENG.pdf (accessed on 30 July 2019). [48]
- Ukrenergo (n.d.), *About us*, <https://ua.energy/about-en/> (accessed on 23 July 2019). [29]
- Ukrenergo (n.d.), *Corporate governance*, <https://ua.energy/ukrenergo-of-the-future/corporate-governance/> (accessed on 14 August 2019). [43]
- Ukrinform (2020), “Ukraine approves list of strategic enterprises not subject to privatization”, <https://www.ukrinform.net/rubric-economy/2856430-ukraine-approves-list-of-strategic-enterprises-not-subject-to-privatization.html> (accessed on 4 February 2020). [66]
- Ukrinform (2019), “National commission approves Ukrenergo’s investment program for 2019”, <https://www.ukrinform.net/rubric-economy/2662574-national-commission-approves-ukrenergos-investment-program-for-2019.html> (accessed on 6 September 2019). [55]
- UNIAN (2020), “Ukrainian enterprises’ debts before Ukrenergo in 2019 exceed US\$102.75 mln”, <https://www.unian.info/economics/10843469-ukrainian-enterprises-debts-before-ukrenergo-in-2019-exceed-us-102-75-mln.html> (accessed on 4 February 2020). [24]
- Unian (2019), “Ukrenergo files arbitration lawsuit against Russia over assets lost in annexed [61]

- Crimea - news economics | UNIAN”, 28, <https://www.unian.info/economics/10664952-ukrenergo-files-arbitration-lawsuit-against-russia-over-assets-lost-in-annexed-crimea.html> (accessed on 6 September 2019).
- Unian (2018), “Ukraine’s Ukrenergo notifies Russia of investment dispute over Crimean assets”, [42] <https://www.unian.info/economics/10076528-ukraine-s-ukrenergo-notifies-russia-of-investment-dispute-over-crimean-assets.html> (accessed on 3 October 2019).
- UNIC (n.d.), *About us*, <https://unic.org.ua/en/> (accessed on 21 August 2019). [47]
- Verkhovna Rada (2019), *Draft Law on Amendments to the Bankruptcy Code of Ukraine (concerning measures aimed at repayment of debt created in the wholesale electricity market)*, http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=67300 (accessed on 17 February 2020). [71]
- Verkhovna Rada (2018), *Draft Law on Peculiarities of Debt Repayment Formed in the Wholesale Electricity Market, No. 8253*, http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=63830 (accessed on 17 April 2020). [23]

www.oecd.org/corporate/soes



Norwegian Ministry
of Foreign Affairs