



LAW OF UKRAINE

**On the Introduction of New Investment Opportunities, Guarantees of
the Rights and Legal Interests of Business Entities for Large-Scale
Energy Modernisation**

**(The Official Bulletin of the Verkhovna Rada of Ukraine (BVR), 2015,
No. 26, Article 220)**

{As amended by Laws

[No. 922-VIII of 25 December 2015](#), BVR, 2016, No. 9, Article 89

[No. 1980-VIII of 23 March 2017](#), BVR, 2017, No. 18, Article 220

[No. 2621-VIII of 22 November 2018](#), BVR, 2019, No. 2, Article 9}

This Law establishes the legal and economic basis for implementing energy services to improve the energy efficiency of state and municipal property facilities.

Article 1. Definitions

1. For the purposes of this Law, the following definitions shall apply:

1) basic level of fuel and energy resources and housing and municipal services consumption is the average value of annual consumption of fuel and energy resources and housing and municipal services (in physical terms) by any energy service object, indicating the consumption of each type of fuel and energy resources and housing and municipal average annual services for three years preceding the year when the public procurement of energy service is carried out;

{Clause 1, part 1 of Article 1 as amended by Law [No. 1980-VIII of 23 March 2017](#)}

2) energy service is a set of technical and organisational energy-saving (energy efficient) and other measures aimed at reducing energy consumption and/or costs of fuel and energy resources and/or housing and municipal services compared to consumption (expenses) without such measures;

3) energy service agreement is an agreement, aimed at implementing the energy service by the energy service provider, which is paid for through reduced consumption and/or expenses for fuel and energy resources and/or housing and municipal services

as a result of energy service provision, compared to consumption (expenses) without such measures;

3¹) energy service object is a house, building, structure, their complex, object and/or element (part) of settlements improvement object, group of buildings (structures), complex (building) of state or municipal ownership in respect of which the central executive authority responsible for the customer of energy service (concerning objects of state ownership), the executive authority of the local council or the local executive authority (concerning objects of municipal ownership) has decided to conduct energy service procurement;

{Part 1 of Article 1 has been supplemented by clause 3¹ under Law [No. 1980-VIII of 23 March 2017](#)}

4) annual payments to the energy service provider are payments determined by the participant of the procurement procedure in the tender offer, offer during negotiations (in case of negotiated procurement procedure) that shall be paid annually by the energy service customer to the energy service provider under the terms of energy service agreement. Annual payment is the amount of payments for the billing (monthly) period;

{Clause 4, part 1 of Article 1 as revised by Law [No. 1980-VIII of 23 March 2017](#)}

5) annual reduction of energy service customer's expenses is the annual reduction of the customer's expenses (in cash) for the consumption of fuel and energy resources and/or housing and utility services as a result of energy service, which is indicated by the participant in the procurement procedure in the tender offer, offer during negotiations (in case of negotiated procurement procedure). The annual reduction of the customer's energy service expenses is calculated by the procurement procedure participant as an estimated reduction in the consumption of fuel and energy resources and/or housing and utility services compared to the basic level of consumption of fuel and energy resources and housing and utility services, multiplied by prices (tariffs) for fuel and energy resources and/or housing and utility services, effective on the date of public procurement procedure announcement.

{Clause 5, part 1 of Article 1 as revised by Law [No. 1980–VIII of 23 March 2017](#)}

2. In this Law, the term “fuel and energy resources” shall be used in the meaning given in the [Law of Ukraine](#) “On Energy Saving”, the term “[housing and utility services](#)” – in the meaning given in the Law of Ukraine “On Housing and Utility Services”, the terms “[main managers of budget funds](#)”, “[manager of budget funds](#)” and “[local financial body](#)” – in the meaning given in the Budget Code of Ukraine, the term “object” – in the meaning given in the [Law of Ukraine](#) “On Regulation of City Planning Activity”, the terms “improvement object of settlements” and “element (part) of improvement object” – in the meaning given in the [Law of Ukraine](#) “On Settlement Improvement”, and the term “public procurement” and other terms not defined in this Law shall be used in the meaning given in the [Law of Ukraine](#) “On Public Procurement”.

{Part 2 of Article 1 as revised by Law [No. 1980-VIII of 23 March 2017](#)}

Article 2. Scope of this Law

1. Public procurement of energy service (hereinafter referred to as – energy service procurement) is carried out according to public procurement procedures established by the [Law of Ukraine](#) “On Public Procurement” for the procurement of services, considering the specifics established by this Law.

{Part 1 of Article 2 as revised by Law [No. 1980–VIII of 23 March 2017](#)}

2. This Law shall be applied to all customers participating in the energy service procurement, regardless of the procurement item cost.

Article 3. Peculiarities of energy service procurement

1. Energy service procurement is carried out by applying an open bidding procedure or negotiated procurement procedure, applied exclusively in cases provided for in [clause 4](#), part 2 of Article 35 of the Law of Ukraine “On Public Procurement”.

2. The deadline for submitting tender offers is established by [paragraph 2](#), part 3 of Article 21 of the Law of Ukraine “On Public Procurement”, the disclosure of tender offers shall be under the procedure provided for in [paragraph 2](#), part 1 of Article 27 of the Law of Ukraine “On Public Procurement”, consideration and evaluation of tender offers – under the procedure provided for in [paragraph 2, part 1](#) and [part 5](#) of Article 28 of the Law of Ukraine “On Public Procurement” if the energy service procurement is under the open bidding procedure.

3. Tender documentation must contain:

1) instructions for tender offer preparation;

2) one or more qualification criteria for participants according to [Article 16](#) of the Law of Ukraine “On Public Procurement”, considering the specifics established by parts 5 and 6, Article 3 of this Law, the requirements established by [Article 17](#) of the Law of Ukraine “On Public Procurement”, and information on the method for confirming the participants' compliance with established criteria and legislation. The customer shall not require documentary confirmation of information on compliance with the requirements of Article 17 of the Law of Ukraine “On Public Procurement” if such information is contained in publicly accessible open unified state registers;

{Clause 2, part 3 of Article 3 shall enter into force on 1 January 2022, see [clause 1](#), Section II of Law No. 1980-VIII of 23 March 2017}

3) the basic annual level of consumption of fuel and energy resources, housing and utility services in physical terms and monetary form at the prices (tariffs) effective on the date of procurement procedure announcement. The executive authority of the relevant local council or local executive authority (concerning municipal property objects), the central executive authority responsible for energy service customer (concerning state property objects), shall approve the basic annual level by adopting

relevant acts under the established procedure. If during the period for which the consumption of fuel and energy resources and housing and utility services at the energy service facility is calculated, a commission, established by an executive authority of the relevant local council or local executive authority (for the municipal property), the central executive authority responsible for energy service customer (concerning state property objects), revealed non-compliance with the air-thermal conditions, lighting level, other requirements for the building maintenance, defined by sanitary norms and rules in the field of labour organisation, maintenance of houses, buildings, structures, the basic annual level is determined following the methodology approved by the central executive authority in charge of shaping the state policy in the field of fuel and energy resource use, energy saving, renewable energy sources and alternative fuels;

4) complete information on the energy service facility and equipment used at the energy service facility for the supply and consumption of fuel and energy resources, housing and utility services, necessary for the participant in the procurement procedure to prepare a tender offer. The customer shall provide the procurement procedure's participant with unhindered access to such an object to check and clarify the information specified in this clause (including technical datasheets, specifications, plans, drawings, technical and quality characteristics, copies of agreements with suppliers of the fuel and energy resources and housing and utility services);

5) a list of criteria and methodology for tender offer evaluation, indicating the specific weight of criteria if the customer has decided to include criteria other than the energy service agreement performance indicator;

6) a period of tender offer validity, but no less than 90 working days from the date of tender offer disclosure;

7) information about the language(s) used to draft tender offers;

8) indication of the deadline for tender offer submission;

9) surname, first name and patronymic, position and address of one or more officials of the customer authorised to communicate with participants in the procurement procedure;

10) formula for calculating the efficiency indicator of the energy service agreement;

11) requirements for tender offer participants to indicate the following information:

a proposed term of the energy service agreement;

annual payments to the energy service provider calculated taking into account the proposed term of the energy service agreement;

annual cost reduction of the energy service customer;

the level of reduction in the consumption of corresponding fuel and energy resources and/or housing and utility services, which shall be achieved as a result of the

energy service delivery, for each year of the energy service agreement (in physical terms and as a percentage of the basic level of consumption of fuel and energy resources and housing and utility services);

a fixed percentage of the amount of reduction of the energy service customer's expenses for the corresponding fuel and energy resources and/or housing and utility services to be paid to the energy service provider;

price of the energy service agreement.

4. The announcement of the energy service procurement procedure must be published in English on the official web portal of the authorised procurement body.

The customer shall not indicate the information provided in paragraphs [4](#), [5](#), [6](#) and [10](#), part 2 of Article 21 of the Law of Ukraine “On Public Procurement” in the announcement of the open bidding procedure for the energy service procurement. The customer shall indicate the information on the minimum increment for improving the efficiency indicator of the energy service agreement during an electronic auction as a percentage and a mathematical formula to be used during an electronic auction to determine indicators of other evaluation criteria (if applicable) in the announcement of the open bidding procedure for the energy service purchase.

5. The customer shall not establish the qualification criterion provided for in [paragraph 4](#), part 2 of Article 16 of the Law of Ukraine “On Public Procurement”. The customer sets such qualification criteria as the availability of documented experience in performing technical and organisational energy-saving (energy-efficient) and other measures. If such a criterion and the list of documents confirming the information on participants in the procurement procedure about their compliance with such criteria are established, they are indicated by the customer in the tender documentation and required during negotiations with the participant (in case of negotiated procurement procedure).

{Part 5 of Article 3 shall enter into force on 1 January 2022, see [clause 1](#), Section II of Law No. 1980-VIII of 23 March 2017}

6. Participant of the procurement procedure can confirm information about their compliance with the qualification criteria defined in [Article 16](#) of the Law of Ukraine “On Public Procurement”, concerning the specifics established by this Law, including by providing the customer with agreements with enterprise(s), institution(s) or organisation(s) that meet such qualification criteria and which will be attracted by the participant for energy service delivery.

{Part 6 of Article 3 shall enter into force on 1 January 2022, see [clause 1](#), Section II of Law No.1980-VIII of 23 March 2017}

7. The customer, during the negotiations (in case of negotiated procurement procedure), shall require from the participant of the procurement procedure to submit the following:

1) documented information on the participant's compliance with the qualification criteria under the [Law of Ukraine](#) “On Public Procurement”, taking into account the specifics established by this Law;

{Clause 1, part 7 of Article 3 shall enter into force on 1 January 2022, see [clause 1](#), Section II of Law No. 1980-VIII of 23 March 2017}

2) information specified in clause 11, part 3 of Article 3 of this Law.

8. The notification of the intention to conclude an agreement, which is published free of charge on the official web portal of the authorised body within one day after the customer decides on the intention to conclude the agreement based on results of negotiations with the participant(s) (in case of negotiated procurement procedure), shall contain the following information:

1) customer's name and location;

2) name, location and contact phone numbers of the participant(s) with whom the negotiations were held;

3) term of validity of the energy service agreement;

4) annual payments to the energy service provider, calculated based on the term of the energy service agreement;

5) annual reduction in the expenses of the energy service customer; the level of reduction in the consumption of corresponding fuel and energy resources and/or housing and utility services, which shall be achieved as a result of the energy service delivery for each year of the energy service agreement (in physical terms and as a percentage from the basic level of consumption of fuel and energy resources, housing and utility services);

6) fixed percentage of the amount of reduction in the expenses of the energy service customer for payment of the corresponding fuel and energy resources and/or housing and utility services to be paid to the energy service provider; energy service agreement efficiency indicator; energy service agreement price;

7) justification of the use of the negotiation procedure.

9. The report on the results of the energy service procurement procedure, instead of price proposals from bidders, price proposals during negotiations (in case of negotiated procurement procedure), shall include energy service agreement performance indicators from bidders or energy service agreement performance indicators specified by participants in the offers during the negotiations (in case of negotiated procurement procedure).

{Text of Article 3 as revised by Law [No. 1980–VIII of 23 March 2017](#)}

Article 3⁻¹. Peculiarities of the energy service procurement procedure for facilities managed by various managers of budget funds

1. The executive authority of the relevant local council or local executive authority (concerning municipal property objects), central executive authority (concerning state property objects), which manages the activity of the energy service customer, shall have the right to decide on conducting the energy service procurement for individual buildings (structures) of the energy service object under the operational management or economic management of various managers of budget funds, by appointing one of these managers of budget funds (hereinafter referred to as the authorised customer) responsible for conducting such procurement.

2. The authorised customer shall conduct the procurement procedure and select the winner of the procurement procedure according to the requirements of this Law and specifics defined in this Article.

3. Managers of budget funds and each authorised customer shall conclude energy service agreements with the winner of the procurement procedure conducted by the authorised customer of procurement in relation to objects under their operational or economic management based on the terms specified in the tender documentation and submitted tender offer.

{The Law has been supplemented by Article 3¹ under Law [No. 1980–VIII of 23 March 2017](#)}

Article 4. Peculiarities of evaluation and consideration of bids submitted by participants in the energy service procurement procedure

1. To evaluate the bids of participants in the procurement procedure and determine the most cost-effective bids when conducting the energy service procurement procedure, instead of the criterion for evaluating tender offers and offers during negotiations (in case of negotiated procurement procedure) shall apply the efficiency indicator of the energy service agreement.

The efficiency indicator of the energy service agreement shall be defined as the total value of differences discounted in each interval between annual reduction of customer's expenses and annual payments to the energy service provider for the twenty-year period from the announcement of the energy service procurement procedure. Discounting is carried out for the accounting rate of the National Bank of Ukraine effective as of the date of the announcement of the energy service procurement procedure. Given efficiency indicator of the energy service agreement is an indicator of the energy service agreement efficiency specified by the participant in the tender offer and recalculated taking into account indicators of other evaluation criteria according to the mathematical formula defined by the customer's evaluation methodology in the tender documentation.

The discount interval is defined as a calendar year. To account for an incomplete interval, the discount rate is adjusted according to the number of days of this incomplete interval.

In cases provided for in Article 3¹ of this Law, the total value of the efficiency indicator of the energy service agreement for objects of each manager of budget funds (energy service customers) is subject to evaluation.

2. To determine the most cost-effective tender offer, in addition to the efficiency indicator of the energy service agreement, other evaluation criteria are applied; tender documentation shall specify their cost equivalent or the share of these criteria in the overall evaluation of tender offers. The specific weight of the criterion “efficiency indicator of the energy service agreement” shall not be lower than 75 per cent.

3. If the open bidding procedure is applied during energy service procurement, tender offers from participants in the energy service procurement procedure are automatically evaluated by the electronic procurement system based on the evaluation criteria and methodology specified by the customer in the tender documentation and using an electronic auction.

Before the start of the electronic auction, the electronic procurement system automatically discloses information on the efficiency indicators of the energy service agreement or specified efficiency indicators of the energy service agreement calculated by the electronic procurement system based on the data specified by participants in tender offers using the formula for calculating the efficiency indicator of the energy service agreement defined by the customer in the tender documentation. Information on the efficiency indicators of the energy service agreement is disclosed from the lowest to the highest indicator.

4. An electronic auction for the energy service procurement consists of a repetitive process of improving the efficiency indicator of the energy service agreement by reducing the proposed term of the energy service agreement by participants and/or annual payments for the energy service provider, carried out in three stages in real-time.

To conduct an electronic auction, all efficiency indicators of the energy service agreement/specified efficiency indicators of the energy service agreement for all offers shall be stated in the electronic procurement system from the lowest to the highest, not specifying participants' names. The lowest efficiency indicator of an energy service agreement/specified efficiency indicator of the energy service agreement is determined as the starting indicator. Before each subsequent stage of the auction, based on the results of the previous stage of the auction, a new starting indicator shall be defined.

If participants submitted offers with the same value of the efficiency indicator of the energy service agreement/specified efficiency indicator of the energy service agreement, the participant who submitted their offer later than other participants with the same value shall be the first to raise the energy service agreement indicator.

During one stage of the auction, the participant can raise the value of the efficiency indicator of the energy service agreement/specified efficiency indicator of the energy service agreement in their offer by at least one increment from their previous value of the efficiency indicator of the energy service agreement/specified efficiency indicator

of the energy service agreement by entering data concerning the amount of reduction of the proposed term of the energy service agreement and/or annual payments to the energy service provider into the electronic procurement system. At each stage of the auction, the electronic procurement system recalculates data entered by participants as a percentage value following the formula for calculating the efficiency indicator of the energy service agreement specified by the customer in the tender documentation.

The announcement of the energy service procurement procedure shall contain information about a minimum increment for raising the efficiency indicator of the energy service agreement during an electronic auction as a percentage and a mathematical formula to be used during the electronic auction to determine indicators of other evaluation criteria.

During each stage of an electronic auction, all participants are provided with access to the information about the location of their efficiency indicators of the energy service agreement or the specified efficiency indicators of the energy service agreement in the electronic procurement system from the lowest to the highest at each stage of the auction and information about the number of participants at this stage of the electronic auction without specifying their name.

5. Participants' tender offers in the energy service procurement procedure is evaluated by selecting the participant with the highest value of the efficiency indicator of the energy service agreement/specified efficiency indicator of the energy service agreement.

6. Disclosure of tender offers, consideration of tender offers for compliance with the requirements of tender documentation, determining the winner during the energy service procurement procedure are carried out under the procedure provided for by the [Law of Ukraine](#) “On Public Procurement”, taking into account the specifics established by this Law.

{Article 4 as revised by Law [No. 1980-VIII of 23 March 2017](#)}

Article 5. Energy service agreement

1. [The standard energy service agreement](#) shall be approved by the Cabinet of Ministers of Ukraine.

2. The essential terms of the energy service agreement include the following:

1) the subject matter of the energy service agreement including the list of measures, terms and conditions for the energy service delivery;

2) energy service agreement price;

3) basic level of consumption of fuel and energy resources and housing and utility services in physical terms and in the monetary form at prices (tariffs) as of the date of announcement of the procurement procedure;

4) the level of reduction in consumption and/or expenses for corresponding fuel and energy resources and/or housing and utility services to be achieved as a result of the energy service delivery for each year of validity of the energy service agreement;

4¹) a fixed percentage of the amount of reduction of the energy service customer's expenses for corresponding fuel and energy resources and/or housing and utility services to be paid to the energy service provider;

{Part 2 of Article 5 has been supplemented by clause 4¹ under Law [No. 1980-VIII of 23 March 2017](#)}

5) the term of energy service agreement validity;

6) the procedure for payment for energy service by reducing consumption and/or expenses for fuel and energy resources and/or housing and utility services in comparison with consumption (expenses) in the absence of such measures as provided for in [part 5](#) of Article 5 of this Law;

7) the obligation of the parties to the agreement to ensure, during the performance of the energy service agreement, the modes and conditions for the use of the fuel and energy resources and/or housing and utility services agreed by the parties and/or defined by the legislation (including air and thermal conditions, artificial lighting, other characteristics that meet the requirements in the field of labour organisation, maintenance of houses, buildings, structures);

8) liability for non-fulfilment or improper fulfilment of obligations under the energy service agreement;

9) terms and procedure for the termination of the energy service agreement and consequences of such termination, including compensation for losses and/or other payments by the parties to the energy service agreement;

10) the procedure for transferring the property ownership right to the customer under the energy service agreement;

11) the procedure for adjusting the definition and calculating the result of energy service delivery in the event of changes in climatic conditions, outdoor air temperature, the purpose of the energy service object, changes in the design or area, procedure or operating mode of the energy service object, etc.;

{Clause 11, part 2 of Article 5 as amended by Law [No. 1980-VIII of 23 March 2017](#)}

12) the procedure and methods for measuring (calculating) and verifying the actual level of reduction in consumption and/or expenses of the customer for fuel and energy resources and/or housing and utility services resulting from the energy service delivery in comparison with consumption and/or expenses in the absence of the energy service.

3. The energy service agreement is concluded at a price equal to the amount of expenses reduction for fuel and energy resources, housing and utility services of the

energy service customer in comparison with the costs that would be borne in the absence of the energy service, which the energy service provider must provide for the entire period of validity of the energy service agreement, considering a fixed percentage of the amount of expenses reduction of the energy service customer for the corresponding fuel and energy resources and/or housing and utility services, which is subject to payment to the energy service provider.

If the energy service agreement provides for a reduction in the level of consumption of the fuel and energy resources, housing and utility services, the energy service agreement is concluded at a price equal to the product of the reduction of consumption of corresponding fuel and energy resources and/or housing and utility services by the customer, which the energy service provider must provide for the entire period of validity of the energy service agreement, and the corresponding prices (tariffs) that were in effect on the date of the announcement of the procedure for purchasing the energy service, considering a fixed percentage of the amount of expenses reduction of the energy service customer for the relevant fuel and energy resources and/or housing and utility services that are subject to payment to the energy service provider.

In cases provided for in [clauses 5, 6, 7](#), part 4 of Article 36 of the Law of Ukraine “On Public Procurement”, the energy service agreement price can be changed.

{Part 3 of Article 5 has been supplemented with paragraph 3 under Law [No. 1980-VIII of 23 March 2017](#)}

4. Calculations under the energy service agreement are made at the expense of the reduction in the expenses of the energy service customer in comparison with the expenses that would be borne in the absence of the energy service for the payment of fuel and energy resources and/or housing and utility services for the corresponding period based on prices (tariffs) that were in effect during the calculation period. If the energy service agreement provides for a reduction of consumption of the fuel and energy resources and/or housing and utility services, the amount of reduction in the expenses of the energy service customer is determined as the difference between the basic level of consumption of fuel and energy resources and housing and utility services and the actual level of consumption of fuel and energy resources and housing and utility services, multiplied by prices (tariffs) for fuel and energy resources and housing and utility services that were in effect during the period of calculation. The actual level of consumption of fuel and energy resources and/or housing and utility services is determined by the relevant metering devices/measuring equipment indicators. It can be adjusted considering changes in climatic conditions, outdoor air temperature, the purpose of the energy service object, changes in the design or area, the order or mode of operation of the energy service object, etc.

{Part 4 of Article 5 as amended by Law [No. 1980-VIII of 23 March 2017](#)}

5. The fixed percentage of the reduction of the energy service customer's expenses for corresponding fuel and energy resources and/or housing and utility services to be paid to the energy service provider must be at least 80 per cent.

If the energy service facility plans to implement energy-saving (energy-efficient) measures at the expense of budget funds, the customer shall have the right to set the maximum amount of fixed percentage which is less than 80 per cent. Tender documentation includes information on the establishment of such a fixed percentage and planned energy-saving (energy-efficient) measures (the scope of works and/or list of equipment, the timing of measure implementation, the expected level of reduction in consumption and/or expenses for corresponding fuel and energy resources and/or housing and utility services, which should be achieved as a result of the implementation of the measures).

{Part 5 of Article 5 as revised by Law [No. 1980-VIII of 23 March 2017](#)}

6. The energy service agreement includes information on the frequency of payments to the energy service provider. Payment under the energy service agreement is made exclusively in cash.

{Part 6 of Article 5 as amended by Law [No. 1980-VIII of 23 March 2017](#)}

7. The term of validity of the energy service agreement shall not exceed 15 years.

{Part 7 of Article 5 as amended by Law [No. 1980-VIII of 23 March 2017](#)}

8. If the total amount of payments made in favour of the energy service provider has reached the energy service agreement price, it is terminated prematurely.

{Part 8 of Article 5 as amended by Law [No. 1980-VIII of 23 March 2017](#)}

9. If the actual annual level of reduction in consumption and/or expenses for corresponding fuel and energy resources and/or housing and utility services as a result of the energy service does not meet the terms of the energy service agreement due to the fault of the energy service provider, the energy service provider shall be obliged to eliminate the shortcomings and/or introduce additional energy service measures to ensure compliance with the terms of the energy service agreement or compensate the energy service customer for the difference between the actual level of reduction in consumption and/or expenses for corresponding fuel and energy resources and/or housing and utility services and the level of reduction calculated based on the terms of energy service agreement.

10. Upon expiration of the term of validity of the energy service agreement or in case of its termination, the state (if the energy service object is in state ownership) or the relevant territorial community (if the energy service object is in communal ownership) shall acquire ownership rights without additional payment to all property formed (established) under the energy service agreement.

{Part 10 of Article 5 as amended by Law [No. 1980-VIII of 23 March 2017](#)}

11. In case of early termination of the energy service agreement at the initiative of the energy service customer, provided that there are no violations on the part of the energy service provider under this energy service agreement, the energy service

customer shall pay the outstanding share of the energy service agreement price to the energy service provider.

12. In the event of liquidating the energy service customer, the relevant manager of budget funds who decided to liquidate the energy service customer must ensure that the outstanding share of the energy service agreement price is paid to the energy service provider.

13. In the event of reorganising the energy service customer, their rights and obligations under the energy service agreement are transferred to the legal successor.

14. The customer enters into the energy service agreement with the participant who is recognised as the winner of the procurement procedure during the term of validity of their offer, no later than 60 working days from the date of the decision on the intent to conclude an energy service procurement agreement following the requirements of the tender documentation and the offer of the winning participant in the procurement procedure.

{Article 5 has been supplemented by part 14 under Law [No. 1980-VIII of 23 March 2017](#)}

Article 6. Procedure for approving essential terms of the energy service agreement

1. The energy service customer, no later than ten days from the date of the decision on the intention to conclude the energy service procurement agreement with the winning participant under the established procedure, shall submit for approval essential terms of the energy service agreement that will be concluded by them, as specified in [clauses 2, 4 and 5](#), part 2 of Article 5 of this Law to the central executive authority implementing the state policy in the field of efficient use of fuel and energy resources, energy saving, renewable energy sources and alternative fuels (concerning objects of state ownership), the Verkhovna Rada of the Autonomous Republic of Crimea, the relevant local council (concerning objects of municipal property).

2. The central executive authority implementing the state policy in the field of efficient use of fuel and energy resources, energy saving, renewable energy sources and alternative fuels, the Verkhovna Rada of the Autonomous Republic of Crimea, the relevant local council approve or refuse to approve the relevant essential terms of the energy service agreement within a period not exceeding 60 working days from the date of the request of the main customer of the energy service to approve relevant essential terms of the energy service agreement.

{Article 6 as revised by Law [No. 1980-VIII of 23 March 2017](#); as amended by Law [No. 2621-VIII of 22 November 2018](#)}

Article 7. Specifics of cancelling by the customer of auctions for the purchase of energy service or recognition them as the ones that have not taken place

1. The customer shall cancel the auction for the purchase of energy service in the following cases:

- 1) no further need to procure an energy service;
- 2) inability to eliminate violations that have arisen due to identified violations of the legislation on public procurement;
- 3) violation of the procurement procedure announcement, notification of the intent to conclude an agreement provided for by the [Law of Ukraine](#) “On Public Procurement”;
- 4) submission of less than two tender offers for participation in the auction;
- 5) acceptance of less than two tender offers for evaluation;
- 6) dismissal of all tender offers under the [Law of Ukraine](#) “On Public Procurement”;
- 7) refusal to approve essential terms of the energy service agreement with the participant in the procurement procedure by the central executive authority implementing the state policy in the field of efficient use of fuel and energy resources, energy saving, renewable energy sources and alternative fuels (concerning state-owned objects), the Verkhovna Rada of the Autonomous Republic of Crimea, the relevant local council (concerning municipal property objects).

{Subclause 7, part 1 of Article 7 as amended by Law [No. 2621-VIII of 22 November 2018](#)}

Information on the cancellation of the procurement procedure based on such grounds shall be defined in the tender documentation.

{Part 1 of Article 7 as revised by Law [No. 1980-VIII of 23 March 2017](#)}

2. If the energy service procurement has become impossible due to force-majeure circumstances, the customer has the right to declare the auction as the one that has not taken place.

{Part 2 of Article 7 as amended by Law [No. 1980-VIII of 23 March 2017](#)}

3. The customer shall publish the notification of the cancellation of the auction for the energy service procurement or its recognition as the one that has not taken place in the electronic procurement system within one day from the date when the customer makes the relevant decision, and the electronic procurement system sends this information automatically to all participants.

{Part 3 of Article 7 as amended by Law [No. 1980-VIII of 23 March 2017](#)}

Article 8. Final and transitional provisions

1. This Law shall come into force on the day following the day of its publication.
2. Within five years from the date of entry into force of this Law, in the absence of accounting tools necessary to determine the basic level of consumption of fuel and energy resources and/or housing and utility services, the level of reduction of

consumption or expenses for fuel and energy resources and/or housing and utility services provided for in the energy service agreement by the customer shall not be less than 30 per cent.

3. To amend the following Laws of Ukraine:

1) [Law of Ukraine “On Energy Saving”](#) (The Official Bulletin of the Verkhovna Rada of Ukraine, 1994, No. 30, Article 283; 2006, No. 15, Article 126; 2014, No. 4, Article 61):

after paragraph 16, the preamble shall be supplemented with a new paragraph, which reads as follows:

“The terms “energy service” and “energy service agreement” shall be used in the meaning given in the Law of Ukraine “On the Introduction of New Investment Opportunities, Guaranteeing Rights and Legal Interests of Business Entities for Large-Scale Energy Modernisation”.

In this regard, paragraphs 17 and 18 shall be paragraphs 18 and 19, respectively;

Article 11 shall be supplemented with parts 2 and 3, which read as follows:

“To implement a set of energy-saving (energy-efficient) and other measures aimed at reducing the consumption and/or costs of fuel and energy resources and/or housing and utility services in comparison with the consumption and/or costs that would exist without such measures (hereinafter referred to as the energy service), an individual or legal entity can conclude the energy service agreement.

The subject of the energy service agreement shall consist in energy service delivery. Under the energy service agreement, all payment shall be made in cash at the expense of the amount (or part thereof) of consumption reduction and/or expenses for fuel and energy resources and/or housing and utility services compared to consumption (expenses) in the absence of such measures.”

{Subclause 2, clause 3 of Article 8 has been repealed under Law [No. 922-VIII of 25 December 2015](#)}

4. Prior to the legislation of Ukraine being brought in compliance with this Law, other laws and regulations shall be implemented to the extent that they do not contradict this Law.

5. Within three months from the enactment of this Law, the Cabinet of Ministers of Ukraine shall:

ensure the adoption of regulatory legal acts implied by this Law;

bring its regulatory acts in line with this Law;

cause ministries and other central executive authorities to bring their regulations in conformity with this Law.

President of Ukraine	P. POROSHENKO
City of Kyiv 9 April 2015 No. 327-VIII	