

KARYNA KARAKHANIAN
ORCID ID: 0000-0003-4927-4558

**CHAPTER 1. USE OF ALTERNATIVE ENERGY SOURCES
IN UKRAINE: THEORETICAL, LEGAL
AND LEGISLATIVE FRAMEWORK**

**1.1. Alternative energy law as a legal institution, science
and academic discipline**

Saving energy resources and improving the use of alternative energy sources are the most relevant and promising global trends of our time. Today, energy security is one of the main components of national security, and Ukraine's energy sector is an economic guarantee of state sovereignty and independence, an element of good governance, a reliable basis for sustainable development of a competitive economy and an integral part of the European energy space. A definitive understanding of the need to switch to renewable energy sources has become a new slogan in recent years. While back in the 1990s it seemed like a distant future, in the early 2000s international political and business circles began to understand the prospects of this trend for the coming decades. Nowadays, it is a reality for many European countries, and Ukraine is trying to join it, sometimes quite successfully.

Since 24 February 2022, after the start of Russia's full-scale war against Ukraine, the national power system has faced perhaps the most serious test: disconnection from the aggressor's power system and ensuring stable operation in the face of hostilities. The country's energy infrastructure has suffered significantly due to the actions of the Russian army, including renewable energy facilities. While before the war, Ukraine's energy system was tending towards "green" indicators, with about 70% of its generation coming from carbon-free sources, and very ambitious plans to gradually replace a certain part of coal and even gas generation with renewable sources, today the country's energy security is a top priority. The martial law has made adjustments to the regulation of social relations in this area, but has not destroyed the desire to make the Ukrainian energy sector less dependent on fossil fuels and more sustainable. Even today, amid the war, green generation continues to develop, but at a slightly slower pace.

Therefore, the introduction and widespread use of renewable energy in Ukraine as a guarantee of national security and sustainable environmental development of the country directly depends on the state of the relevant energy sector, its modernization and integration of the Ukrainian infrastructure and regulatory and legislative framework with the EU.

Today, alternative energy is a rapidly developing area of social relations that requires timely and adequate evolution of this category as a legal institution, science and academic discipline.

As an independent legal institution, alternative energy law is a set of legal norms enshrined in energy legislation and regulating social relations regarding the use of non-fossil (renewable) energy sources, namely solar, wind, aerothermal, geothermal, hydrothermal, wave and tidal energy, hydropower, biomass energy, gas from organic waste, gas from sewage treatment plants, biogas for electricity production, compliance with the principles of sustainable development and the protection of the environment.

The issue of legal regulation of alternative energy does not belong to traditional, well-studied areas of social relations. On the contrary, the rapid development of technology, which has made it possible to generate energy from renewable sources on a completely competitive basis, has raised the question for scientists, lawmakers and practitioners about the need to quickly choose a legal model and specific legal mechanisms for regulating these relations. Fifteen years ago, Ukraine was only talking about the need to start using energy from alternative sources, and initial, basic legal provisions were being created that would form the basis of a protectionist legal model for regulating these relations. Ukraine is already in the process of actively developing and building a network of alternative energy facilities.

As an independent legal institution, alternative energy law is characterized by certain features inherent in it due to the specifics of social relations regulated by its provisions. Thus, the following features can be distinguished:

- *ensuring rational use of natural resources*, which is manifested in the reduction of the use of fossil fuels in electricity generation and production. This feature of the legal institution helps to prevent the depletion of natural resources such as coal, gas and oil, and also helps to stop the process of their complete exhaustion. In addition, those natural resources that are directly used in the location of alternative energy facilities, such as land, water bodies, etc., are also subject to rational use;

- *guaranteeing sustainable environmental development*, as a result of which legal norms on the use of alternative energy sources ensure compliance with international and national criteria for a harmonious combination of social,

economic and environmental aspects of society. Sustainable development is the key to the existence of the ecosystem as a whole;

– *ensuring decarbonization of production* through the use of environmentally friendly energy sources, reducing the share of fossil fuels in the total energy supply. Decarbonization is the number one goal in implementing the strategy of transforming Europe into a climate-neutral continent;

– *ensuring energy security as a component of national security*, the relevance of which has been once again emphasized by the ongoing war in the country. The need to have a strategic reserve of energy carriers and electricity ready for consumption is a guarantee of Ukraine's energy independence, the issues of which have become particularly acute after the full-scale invasion of Russia;

– *promoting the development of the energy sector on a market basis*, which is manifested in the adoption of a special Law of Ukraine "On the Electricity Market", the introduction of a "green" tariff, and the procedure for auctioning alternative energy produced.

To perform its functions, science must be ahead of the actual course of social relations. Its task should be to develop optimal legal models so that when social relations are in dire need of proper legal regulation, the lawmaker can use scientifically sound conceptual developments. If a scientific doctrine is built in parallel with the development of social relations, it is more difficult for it to fulfil its predictive functions. The worst case is when the scientific community does not anticipate but rather catches up with the needs of society for research. In this case, there is no adequate scientific response to the public demand, and the legal framework for new relations is built without a conceptual basis. Unfortunately, there are many examples of this scenario, and the consequences are predictable. For the most part, such legal regulation is doomed to permanent changes in order to correct the legal defects.

Alternative energy is a rapidly developing area of social relations that requires timely and adequate evolution of not only legal regulation, but also scientific thought, which takes into account the changing actual conditions, needs and problems of the industry. A characteristic feature is that only the period of Ukraine's independence should be recognized as the period of scientific study of legal relations in the field of alternative energy. Such a relatively short period of time is also heterogeneous, since scientific attention to alternative energy legal issues became noticeable only in the 2000s. The short history of the development of legal doctrine in the field of alternative energy regulation explains many of its current problems. In particular, due to the youth of this legal institution, scientific research in the field of legal regulation of alternative energy has such an imperfect and

almost non-existent scientific and methodological basis. At the same time, there is an increase in the number of scholarly references to various issues of legal support for alternative energy. We can predict a further increase in the number of studies in this area, given the rapid development of relevant social relations.

The content aspect is complex and is represented by several characteristic features of the development of research in the field of alternative energy:

a) an important leitmotif of modern research is *the fulfilment of international legal obligations and harmonization with EU legislation in the field of alternative energy*. Indeed, the signing of the Association Agreement with the EU has had a large-scale, long-term impact on the development of modern Ukrainian legislation, including in the field of alternative energy regulation. Thus, the Agreement stipulates that the parties are committed to “promoting energy efficiency and the use of renewable energy sources” and “shall make efforts to facilitate and encourage trade and foreign direct investment in ... the use of balanced sources of renewable energy and energy-saving products”¹. The agreement provides for mutual cooperation in the development and “support of renewable energy, taking into account the principles of economic feasibility and environmental protection, as well as alternative fuels, including sustainable biofuel production and cooperation in the field of regulatory issues, certification and standardization, as well as technological and commercial development”².

Given the fact that the EU is rapidly moving towards the implementation of the proclaimed Green Deal, the implementation of the Fourth Energy Package entitled “Clean Energy for All Europeans” is of particular interest, one of the objectives of which is to create a modern design for the European energy market adapted to the new realities – more flexible and adapted to integrate a larger share of renewable energy sources. In other words, the EU is confidently moving towards further modification of the regulatory environment in order to adequately regulate the relations of alternative energy, which already account for 30% of the energy market in the Union. Ukraine also demonstrates the growth of the alternative energy sector,

¹ Про ратифікацію Угоди про асоціацію між Україною, з однієї сторони, та Європейським Союзом, Європейським співтовариством з атомної енергії та їхніми державами-членами, з іншої сторони: Закон України від 16 вересня 2014 року. *Відомості Верховної Ради України*. 2014. № 40. Ст. 2021.

² Про ратифікацію Угоди про асоціацію між Україною, з однієї сторони, та Європейським Союзом, Європейським співтовариством з атомної енергії та їхніми державами-членами, з іншої сторони: Закон України від 16 вересня 2014 року. *Відомості Верховної Ради України*. 2014. № 40. Ст. 2021.

namely: according to the Ministry of Energy of Ukraine, the share of renewable energy production in Ukraine in January-August 2020 doubled compared to the same period last year and amounts to 13.3% in the country's overall energy balance (information on the operation of the electricity sector in August 2020).

It should be acknowledged that the demonstrated growth is not identical to the European one, nor is the level achieved. That is why the expediency of legal research aimed at analyzing EU legislation and ways to harmonize national legislation is not in doubt, but the following should be taken into account. Blind, scientifically unsupported copying of European legislation without elaboration of scientific and methodological principles may lead to problems of conflict of this legal body in the national legal system of Ukraine. This is not only a theoretical problem – it is a problem of compliance of law with the real state of social relations;

b) *a large proportion of research is devoted to the argumentation of the need to switch to alternative energy.* The arguments provided are of different nature: economic (feasibility, profitability, payback periods, profitability, etc.), environmental (level of negative impact on the environment, reduction of the required use of traditional fuels, conservation of non-renewable natural resources, etc.), technological (use of new technical solutions, emergence of the latest scientific and technical developments, etc.). Of course, lawyers must rely on objective data from other sciences (natural, environmental, economic, technical, etc.). This basis firmly ties legal research to real processes in social practice and prevents legal research from losing its social benefit. However, it should not be forgotten that legal analysis cannot be limited to stating these facts and recounting them. A significant part of the research on alternative energy, which is positioned as legal, is not so in its content, since it does not analyze legal issues, but rather issues of a completely different sectoral nature. The use of the achievements of other sciences should be used by lawyers as a basis for the relevance of the topic, as an important argument for the growing social importance of the relevant relations and the need for their adequate legal regulation. From this perspective, legal research is only enriched with factual data, gains the necessary relevance and confirms its timeliness. At the same time, the results of other sciences cannot replace legal research, including in the field of alternative energy regulation;

c) since alternative energy relations are a relatively new subject of legal research, *comparative legal studies make up a significant proportion of research in this area.* Much attention is paid to the analysis of foreign experience in legislative support for alternative energy. Particular emphasis is placed on legislative incentives for alternative energy in the EU (Germany, Denmark, Czech Republic, etc.), the USA and other countries.

While generally praising the intensification of such research, it should be emphasized that it is of a supplementary nature. It should not be forgotten that even within the EU, different countries have chosen their own legislative tactics to stimulate alternative energy, taking into account their own resources, local conditions and legal traditions. Comparative legal studies are extremely interesting for understanding the variety of ways of possible legislative stimulation of alternative energy development, identifying the most successful and unsuccessful legal strategies in this area. The results of such studies can be actively used as an important tool in the development of our own national doctrine of legal regulation of alternative energy, but cannot replace this doctrine;

d) *sectoral fragmentation*. This is manifested in the fact that alternative energy relations are studied in different branches of legal science. The reform of the energy sector in Ukraine, which is heavily influenced by the Association Agreement with the EU, is increasingly defining the framework of a fully formed branch of legislation – the energy legislation of Ukraine. These processes are not fully reflected in the scientific literature, as energy relations are mostly studied in a fragmented manner – from the perspective of certain branch legal sciences. In particular, representatives of commercial law are quite active in studying energy relations. For example, research was conducted on the legal issues of alternative energy, and G. D. Dzhumageldieva defended her dissertation on “Legal Support of Energy Saving”³, O. I. Kulyk on “Economic and legal support of stimulation of energy production using alternative sources”⁴, E. Rybnikova on “Economic and legal incentives for the use of renewable energy sources in Ukraine”⁵. All of these studies naturally focus on the economic and legal aspects of alternative energy activities. This directly explains the neglect of the environmental and legal component of these relations. That is why economic and legal studies cannot claim to exhaust the topic of legal regulation in the field of alternative energy.

The doctrine of legal support for alternative energy is also complemented by international legal studies, in particular, the dissertations of S. D. Bilotskyi on “International Legal Regulation in the Field of

³ Джумагельдієва Г. Д. Правове забезпечення енергозбереження: автореф. дис. ... докт. юрид. наук 12.00.04. Донецьк, 2012. 32 с.

⁴ Кулик О. І. Господарсько-правове забезпечення стимулювання виробництва енергії з використанням альтернативних джерел: автореф. дис. ... канд. юрид. наук 12.00.04. Вінниця, 2019. 19 с.

⁵ Рибнікова Е. Ю. Господарсько-правове стимулювання використання відновлюваних джерел енергії в Україні: автореф. дис. ... канд. юрид. наук 12.00.04. Одеса, 2018. 20 с.

Environmentally Oriented Energy”⁶, M.V. Chipko “International Legal Regulation of Cooperation of States in the Field of Renewable Energy Use”⁷ and Y. S. Benedyk on the topic “Organizational and legal mechanism of international cooperation in the field of renewable energy sources”⁸. In their research, scholars focus primarily on the international legal regulation of alternative energy relations and Ukraine’s commitments in this area.

It is necessary to emphasize the significant achievements of scientists – representatives of land, agrarian, environmental and natural resource law. An interesting study, which was one of the first in the field of legal support for alternative energy in Ukraine, should be recognized as the thesis of O. B. Kishko-Yerli on “Legal regulation of the use of renewable energy sources”⁹. The research has a natural resource law bias. The author has thoroughly researched the issues of terminology, ownership and use of renewable energy sources, promotion of their use and public administration in this area. The author concludes that there is an institution of renewable energy sources in the natural resource law of Ukraine, and formulates proposals for improving Ukrainian legislation.

In recent years, interesting dissertations on agrarian law have been defended, in particular: Y. Rud on “Legal regulation of energy saving in agriculture of Ukraine”¹⁰, C.A. Obolenska on “Legal regulation of biofuel production by agricultural producers in Ukraine”¹¹ and A. V. Pastukh on “Legal regulation of cultivation and processing of agricultural raw materials for biofuel production”¹².

In addition, there is a large body of administrative and legal research on energy relations, which in some way affect the relations of alternative

⁶ Білоцький С. Д. Міжнародно-правове регулювання у сфері екологічно орієнтованої енергетики: автореф. дис. ... докт. юрид. наук : 12.00.11. Київ, 2016. 40 с.

⁷ Чіпко М. В. Міжнародно-правове регулювання співробітництва держав у сфері використання відновлюваної енергетики : автореф. дис. ... канд. юрид. наук : 12.00.11. Одеса, 2017. 23 с.

⁸ Бенедик Я.С. Організаційно-правовий механізм міжнародного співробітництва у сфері використання відновлюваних джерел енергії:автореф. дис. ... канд. юрид. наук: 12.00.11. Харків, 2016. 21 с.

⁹ Кишко-Єрлі О. Б. Правове регулювання використання відновлюваних джерел енергії : автореф. дис. ... канд. юрид. наук : 12.00.06. Київ, 2010. 16 с.

¹⁰ Рудь Ю. М. Правове регулювання енергозбереження у сільському господарстві України : автореф. дис. ... канд. юрид. наук : 12.00.06. Київ, 2015. 17 с.

¹¹ Оболєнська С. А. Правове регулювання виробництва біопалива сільськогосподарськими товаровиробниками в Україні : автореф. дис. ... канд. юрид. наук : 12.00.06. Харків, 2017. 20 с.

¹² Пастух А. В. Правове регулювання вирощування та перероблення сільськогосподарської сировини для виробництва біопалива: автореф. дис. ... канд. юрид. наук : 12.00.06. Київ, 2017. 18 с.

energy. These include, in particular, dissertations by Y. V. Vashchenko¹³(2015), O. M. Gubrienko¹⁴ (2006), N. M. Kovalko¹⁵ (2007), V. V. Korobkin¹⁶ (2015), O. E. Kostrubitska¹⁷ (2009), V. M. Kostiukhina¹⁸ (2010), R. I. Kramar¹⁹ (2011), N. V. Maidanevych²⁰ (2015), A. M. Novytskyi²¹ (2005), R. I. Raimov²² (2019), R. S. Serhiiev²³ (2010), O. V. Serdiuchenko²⁴ (2009) and others.

On the one hand, such a wide range of sectoral studies is a positive factor, as it allows us to consider various aspects of alternative energy relations. However, the fragmentation of such studies should be recognized as a negative consequence. The legal regulation of alternative energy as a structural part of energy law adopts its characteristic feature – complexity.

¹³ Ващенко Ю. В. Державне регулювання у сфері енергетики України: адміністративно-правовий аспект: автореф. дис. ... докт. юрид. наук 12.00.07. Київ, 2015. 36 с.

¹⁴ Губрієнко О.М. Організаційно-правові засади державного управління в галузі електроенергетики в Україні: автореф. дис... канд. юрид. наук: 12.00.07. Ірпінь, 2006. 20 с.

¹⁵ Ковалко Н.М. Фінансово-правове регулювання спеціальних режимів розрахункових відносин (на прикладі паливно-енергетичного комплексу України): автореф. дис... канд. юрид. наук: 12.00.07. К., 2007. 20 с.

¹⁶ Коробкін В. В. Адміністративно-правове регулювання енергопостачання в Україні: автореф. дис. ... канд. юрид. наук : 12.00.07. Запоріжжя, 2015. 18 с.

¹⁷ Кострубіцька О.Є. Адміністративна відповідальність за правопорушення в паливно-енергетичному комплексі України: автореф. дис. ... канд. юрид. наук: 12.00.07. Київ, 2009. 19 с.

¹⁸ Костюхіна В. М. Організаційно-правові засади галузевого управління: на прикладі електроенергетики: автореф. дис. ... канд. юрид. наук : 12.00.07. Київ, 2010. 20 с.

¹⁹ Крамар Р. І. Адміністративно-правова протидія марнотратному витрачання паливно-енергетичних ресурсів в Україні: автореф. дис. ... канд. юрид. наук : 12.00.07. Львів, 2011. 19 с.

²⁰ Майданевич Н. В. Адміністративно-правове регулювання відносин у сфері електроенергетики: автореф. дис. ... канд. юрид. наук : 12.00.07. Київ, 2015. 19 с.

²¹ Новицький А. М. Організаційно-правові засади державного управління у паливно-енергетичному комплексі України: автореф. дис... канд. юрид. наук: 12.00.07. Ірпінь, 2005. 19 с.

²² Раїмов Р. І. Адміністративно-правове регулювання діяльності суб'єктів природних монополій у сферах енергетики та комунальних послуг: автореф. дис. ... канд. юрид. наук : 12.00.07. Суми, 2019. 20 с.

²³ Сергєєв Р. С. Засоби забезпечення раціонального використання і збереження електричної енергії в Україні (адміністративно-правовий аспект) : автореф. дис. ... канд. юрид. наук : 12.00.07. Дніпропетровськ, 2010. 20 с.

²⁴ Сердюченко О. В. Адміністративно-правові засади забезпечення енергетичної безпеки України: автореф. дис... канд. юрид. наук: 12.00.07. Київ, 2009. 20 с.

Based on the analyzed features of the development of scientific thought in the area of legal regulation of alternative energy relations, several characteristic trends in the development of legal science in this area can be identified.

– The first trend is *the rapid intensification of scientific research*. The pattern of the scientific community's attention to the legal problems of alternative energy is quite clear: a) in the 1990s, sporadic scientific research was devoted to alternative energy issues; b) in the 2000s, a significant number of publications appeared, mainly articles and reports on the legal regulation of alternative energy; c) in the 2010s, scientific research was supplemented by a number of dissertations in various branches of legal knowledge. We believe that the next step will be to study the relevant complex legal relations as a whole.

– The next trend is *the intensification of European integration processes*, which is manifested in the Europeanisation of domestic energy legislation and doctrine. If the chosen political course is maintained, Ukrainian legal science will quite predictably deepen the study of European legislation in the field of alternative energy with a view to imitating it in the domestic legal realities. However, in our opinion, in the interests of preserving the Ukrainian legal culture, this perspective should be analyzed critically. On the positive side, science has a certain idealistic model to which it constantly refers and looks up to. However, a negative consequence may be a certain atrophy of domestic science as a result of abandoning its own legal developments, reducing scientific research to blind copying of foreign (even if positive) experience. The fact that this negative process has already started is confirmed by the concentration of domestic scholars solely on legislation and comparative legal studies, combined with almost complete disregard for the need to build the theoretical and methodological foundations of legal regulation of alternative energy relations. It is the absence of a unified methodological framework for the regulation of these relations that is the most significant evidence that the national scientific doctrine of legal regulation of alternative energy has not yet been formed. This conclusion is reinforced by the revealed sectoral fragmentation of studies that do not cover the subject as a whole, but analyze only certain parts of it ²⁵.

In view of the above, the following interim conclusions can be drawn. Firstly, the development of scientific thought in the field of legal regulation of alternative energy in Ukraine demonstrates several characteristic

²⁵ Харитоновна Т. Є., Григор'єва Х. А. Доктрина правового регулювання альтернативної енергетики в Україні: сучасні тенденції розвитку. *KELM (Knowledge, Education, Law, Management)*. 2020. № 3 (31). С. 238–245.

features, including: 1) in the methodological aspect – an acute shortage of scientific and methodological developments; 2) in the terminological aspect – a rather short period of research in this area (limited to the period of Ukraine’s independence); 3) in the substantive aspect – a) focus on harmonization with EU legislation b) a significant proportion of comparative legal research; c) a significant number of essentially non-legal studies aimed at proving the need and feasibility of transition to alternative energy; d) sectoral fragmentation.

Secondly, the identification of these features makes it possible to identify the main trends in the development of modern legal science dealing with alternative energy, namely: a) the tendency to intensify scientific research in this area; b) the tendency towards European integration.

Thirdly, based on the results of the analysis, it can be stated that the national doctrine of legal regulation of alternative energy in Ukraine is at the stage of formation.

Fourthly, the reform of the energy sector in Ukraine, which is heavily influenced by the Association Agreement with the EU, is increasingly clearly defining the framework of a fully formed area of legislation – the energy legislation of Ukraine. These processes are not fully reflected in the scientific literature, as energy relations are mostly studied in a fragmented manner – from the perspective of certain branch legal sciences. Legal regulation of alternative energy should be considered as a component of the energy law system of Ukraine.

The system of alternative energy law as an academic discipline is a body of knowledge, generalizations and information about the main provisions and content of the energy sector in terms of the use of renewable energy sources, which are taught for the purpose of training professional legal scholars. Guided by the curriculum, the academic discipline taught may differ in the amount of information from the information about the legal institution of alternative energy law. At the same time, the discipline under study is closely related to the system of science.

The main provisions studied in the general part of alternative energy law are the historical aspects and periodization of the formation and development of the renewable energy industry, the main stages and trends in the functioning of energy legislation. The special part deals with the issues of legal regulation of production and use of energy derived from alternative sources (solar, wind, aerothermal, geothermal, hydrothermal, wave and tidal energy, hydropower, biomass energy, gas from organic waste, gas from sewage treatment plants, biogas).

1.2. Development of legislation in the field of alternative energy sources in Ukraine

The formation of a system of effective legislation on the use of alternative energy sources in Ukraine is a long-term, step-by-step process which reflects, first of all, the nature of development of social relations in the State, the level of development of its economy, and important international events. Based on the analysis of the historical experience of regulating these energy relations and an objective assessment of the regulatory framework of previous years, the author has made a chronology of the development of legislation in the field of alternative energy sources in Ukraine, according to which five main stages have been identified.

The stage of emergence and development of legislation on the use of alternative energy sources (1994 – 1999). It is characterized by the adoption of the basic Laws of Ukraine “On Energy Saving” and “On Electricity”, which laid the foundations for the legislative support of the energy system, including its integral component – alternative energy. Thus, the Law of Ukraine “On Energy Saving”, adopted by the Verkhovna Rada of Ukraine on 1 July 1994, was one of the first major regulatory acts to define the system of legal, economic, social and environmental foundations for energy saving for all business entities located in Ukraine, as well as for citizens²⁶. The value of this Law was that it was the first to define non-traditional and renewable energy sources at the legislative level and to set out measures to encourage energy saving (including for the development of alternative energy).

To achieve the goals set out in the Law of Ukraine “On Energy Saving”, the State Committee of Ukraine for Energy Saving was established by a Presidential Decree on 6 October 1995, with one of its tasks being to coordinate the development and use of non-traditional and renewable energy sources.

The foundations for the development of alternative energy generation in Ukraine were also laid by the adoption of the Law of Ukraine “On Electricity” of 16 October 1997²⁷. Its provisions provide for measures to stimulate the production of electricity from alternative sources, including the establishment of a “green” tariff for business entities, i.e. a special tariff at which electricity produced at electricity facilities from alternative energy sources is purchased. Currently, this regulatory act has ceased to be effective pursuant to clause 23 of Section XVII “Final and Transitional Provisions” of the Law of Ukraine “On the Electricity Market” of 13 April 2017.

²⁶ Про енергозбереження: Закон України від 1 липня 1994 року. *Відомості Верховної Ради України*. 1994. № 30. Ст. 283 (втратив чинність 13.11.2021 року)

²⁷ Про електроенергетику: Закон України від 16 жовтня 1997 року. *Відомості Верховної Ради України*. 1998. № 1. Ст. 1 (втратив чинність 01.07 2019 року)

A significant step in the development of relations for the rational use of energy resources was the adoption of the Resolution of the Cabinet of Ministers of Ukraine “On the State Programme “Environmentally Friendly Geothermal Energy of Ukraine” dated 17 January 1996²⁸. In order to meet the needs of the national economy in electricity, introduce non-traditional and renewable energy and fuel sources, and make more efficient use of the production capacities of machine-building and military-industrial enterprises, the Government of Ukraine adopted a resolution of 3 February 1997 approving a comprehensive programme for the construction of wind power plants²⁹.

The increase in electricity and heat resources through the use of non-traditional and renewable energy and fuel sources was envisaged by the Comprehensive State Programme for Energy Saving of Ukraine, which was approved by the Cabinet of Ministers of Ukraine on 5 February 1997³⁰.

In view of the above, since 1994, the first stage of the emergence and development of legislation on the use of alternative energy sources has been launched in our country. A characteristic feature of the regulatory acts of this stage was a high degree of generalization of their provisions and the absence of special legislation that would regulate relations in the field of alternative energy sources³¹.

The next *stage of formation of legislation on the use of alternative energy sources* (2000-2011) is characterized by the adoption of special legislation in the field of alternative energy. Adoption of the Law of Ukraine “On Alternative Fuels” of 14 January 2000³² allowed to define the legal, social, economic, environmental and organizational principles of production (extraction) and use of alternative fuels and to provide for an economic incentive mechanism in the field of alternative fuels. In pursuance

²⁸ Про Державну програму “Екологічно чиста геотермальна енергетика України”: Постанова Кабінету Міністрів України від 17 січня 1996 р. № 100. URL: <https://zakon.rada.gov.ua/laws/show/100-96-п#Text>

²⁹ Про Комплексну програму будівництва вітрових електростанцій: Постанова Кабінету Міністрів України від 3 лютого 1997 р. № 137. Офіційний вісник України. 1997. № 8. код акта 228/1997

³⁰ Про Комплексну державну програму енергозбереження України: Постанова Кабінету Міністрів України від 5 лютого 1997 року № 148. *Офіційний вісник України*. 1997. № 6. Ст. 945.

³¹ Платонова Є.О. Розвиток законодавчого регулювання альтернативної енергетики в Україні. *Актуальні проблеми юридичної науки: збірник тез Міжнародної науково-практичної конференції “Дев’ятнадцяті осінні юридичні читання”* (м. Хмельницький, 23 жовтня 2020 року). Хмельницький: Хмельницький університет управління та права імені Леоніда Юзькова, 2020. С.324-327.

³² Про альтернативні види палива: Закон України від 14 січня 2000 року: *Відомості Верховної Ради України*. 2000. № 12. Ст. 94.

of this Law, the Cabinet of Ministers of Ukraine adopted the Resolution “On the Procedure for Issuing Certificates of Alternative Fuels” of 5 October 2004³³ and the Order of the State Committee for Energy Saving of Ukraine “On Approval of the Procedure for Conducting Expert Evaluation to Confirm the Fuel as an Alternative” of 10 December 2004³⁴, which established the mechanism for conducting an expert examination to determine the characteristics of fuel to confirm its classification as an alternative fuel and the procedure for obtaining and form of a certificate of classification as an alternative fuel.

A significant event was the adoption of the Law of Ukraine “On Alternative Energy Sources” of 20 February 2003, which defines the legal, economic, environmental and organizational aspects of using alternative energy sources and promoting their use in the fuel and energy complex³⁵. According to the current legislation, the concept of “alternative energy sources” is broader than “renewable energy sources”, as it includes not only environmentally friendly renewable sources, but also secondary energy resources.

Despite the importance of their functioning, the Laws of Ukraine “On Alternative Energy Sources” and “On Alternative Fuels” were basically declarative, did not provide for financial support and competitive mechanisms for the development of alternative energy sources, and established unreasonable bureaucratic obstacles³⁶.

The following laws were adopted to improve the legal framework for alternative energy: “On Amendments to Certain Legislative Acts of Ukraine on Stimulation of Energy Saving Measures” of 16 March 2007³⁷; “On Amendments to Certain Laws of Ukraine on Establishment of the Green

³³ Про порядок видачі свідоцтва про належність палива до альтернативного: Постанова Кабінету Міністрів України від 5 жовтня 2004 р. № 1307. *Офіційний вісник України*. 2004. № 40. Ст. 2633.

³⁴ Про затвердження Порядку проведення експертизи для підтвердження належності палива до альтернативного: Наказ Державного Комітету України з енергозбереження від 10 грудня 2004 року № 183. *Офіційний вісник України*. 2004. № 52. Ст. 3474.

³⁵ Про альтернативні джерела енергії: Закон України від 20 лютого 2003 року. *Офіційний вісник України*. 2003. № 12. Ст. 522.

³⁶ Балюк Г. І., Сушик О. В. Відновлювальна енергетика в Україні: правові питання. *Конституційні засади аграрного, земельного та екологічного права: 20 років розвитку*: Матер. “круглого столу” (м. Київ, 27 трав. 2016 р.). Чернівці: Вид. Кондратьєв А. В., 2016. С. 247–251.

³⁷ Про внесення змін до деяких законодавчих актів України щодо стимулювання заходів з енергозбереження: Закон України від 16 березня 2007 року. *Відомості Верховної Ради України*. 2007. № 23. Ст. 301.

Tariff” of 25 September 2008³⁸; “On Amendments to Certain Laws of Ukraine on Promotion of Production and Use of Biological Fuels of 21 May 2009³⁹. Improvement of organizational and technical measures and creation of conditions for electricity transmission was facilitated by the adoption of the Cabinet of Ministers of Ukraine Resolution “On peculiarities of connection to the electricity grid of electricity generating facilities using alternative sources” of 19 February 2009⁴⁰.

One of the characteristic features of this stage is the development of sectoral legislation regulating the functioning of alternative energy. Thus, tariff and fiscal policy is an important element of the mechanism of state regulation of alternative energy. That is why the system of legal support for the use of alternative energy sources is supplemented by the provisions of the Tax and Customs Codes of Ukraine. The organizational and legal framework for the allocation and use of land plots for energy facilities is set out in the Law of Ukraine “On Energy Lands and the Legal Regime of Special Zones of Energy Facilities” of 09 July 2010⁴¹.

At this stage, there is a quantitative and qualitative development of the policy framework for stimulating alternative energy. In particular, during this period, the following were adopted: The Ethanol Programme, approved by the Cabinet of Ministers of Ukraine on 04 July 2000 (expired on 13 January 2011)⁴²; The Concept of the Programme for Development of Diesel Biofuel Production until 2010, approved by the Cabinet of Ministers of Ukraine on 28 December 2005⁴³, Programme for the Development of Diesel Biofuel Production, approved by the Cabinet of Ministers of Ukraine on 22

³⁸ Про внесення змін до деяких законів України щодо встановлення “зеленого” тарифу: Закон України від 25 вересня 2008 року: *Відомості Верховної Ради України*. 2009. № 13. Ст. 155.

³⁹ Про внесення змін до деяких законів України щодо сприяння виробництву та використанню біологічних видів палива: Закон України від 21 травня 2009 року: *Відомості Верховної Ради України*. 2009. № 40. Ст. 577.

⁴⁰ Про особливості приєднання до електричних мереж об’єктів електроенергетики, що виробляють електричну енергію з використанням альтернативних джерел”: постанова Кабінету Міністрів України від 19 лютого 2009 року. *Офіційний вісник України*. 2009. № 14. Ст. 422.

⁴¹ Про землі енергетики та правовий режим спеціальних зон енергетичних об’єктів: Закон України від 09 липня 2010 року. *Відомості Верховної Ради України*. 2011. № 1. Ст. 1.

⁴² Про затвердження Програми “Етанол”: постанова Кабінету Міністрів України від 04 липня 2000 року № 1044. *Офіційний вісник України*. 2000. № 27. Ст. 1126 (втратила чинність)

⁴³ Про схвалення Концепції Програми розвитку виробництва дизельного біопалива на період до 2010 року: розпорядження Кабінету Міністрів України від 28 грудня 2005 року № 576-р. *Офіційний вісник України*. 2008. № 89. Ст. 3357.

December 2006⁴⁴, The State Target Economic Programme for Energy Efficiency and Development of Energy Production from Renewable Energy Sources and Alternative Fuels for 2010-2021, approved by the Cabinet of Ministers of Ukraine on 1 March 2010⁴⁵.

New goals in the policy of development of energy production from alternative sources required institutional changes at the state level. Thus, by the Decree of the President of Ukraine of 20 April 2005, the State Committee for Energy Saving of Ukraine was liquidated and its functions were transferred to the Ministry of Fuel and Energy of Ukraine. Soon after, on 31 December 2005, in order to improve the efficiency of the state policy in the field of energy use and energy saving, the President issued a decree establishing the National Agency of Ukraine for Ensuring Efficient Use of Energy Resources as a central executive body with a special status⁴⁶. One of the tasks of this agency was to ensure an increase in the share of non-conventional and alternative fuels in the balance of energy supply and demand.

The second stage of the formation of legislation on the use of alternative energy sources is characterized by the adoption of basic regulatory legal acts in the field of alternative energy, state support for the latter, and the introduction of appropriate tariff and fiscal policies. However, despite a significant number of legal acts adopted in the area under study, the legal regulation of relations in the use of alternative energy sources was sometimes fragmented and inconsistent⁴⁷.

With the adoption of the Law of Ukraine “On Ratification of the Protocol on Ukraine’s Accession to the Treaty Establishing the Energy Community” of 15 December 2010⁴⁸, Ukraine has committed itself to implementing a number of EU directives, including Directive 2001/77/EC

⁴⁴ Про затвердження Програми розвитку виробництва дизельного біопалива: Постанова Кабінету Міністрів України від 22 грудня 2006 року № 1774. *Офіційний вісник України*. 2006. № 52. Ст. 3497.

⁴⁵ Про затвердження Державної цільової економічної програми енергоефективності і розвитку сфери виробництва енергоносіїв з відновлюваних джерел енергії та альтернативних видів палива на 2010-2021 роки: Постанова Кабінету Міністрів України від 1 березня 2010 року № 243. *Офіційний вісник України*. 2010. № 16. Ст. 762.

⁴⁶ Про утворення Національного агентства України з питань забезпечення ефективного використання енергетичних ресурсів: Указ Президента України від 31 грудня 2005 року № 1900/2005. *Офіційний вісник України*. 2006. № 1. Ст. 22.

⁴⁷ Платонова Є.О. Етапи розвитку законодавства у сфері використання альтернативних джерел енергії в Україні. *Юридичний науковий електронний журнал*. № 8. 2020. С. 251–255.

⁴⁸ Про ратифікацію Протоколу про приєднання України до Договору про заснування Енергетичного Співтовариства: Закон України від 15 грудня 2010 року. *Відомості Верховної Ради України*. 2011. № 24. Ст. 170.

on the promotion of the use of electricity from renewable energy sources in the internal electricity market.

Ukraine's accession to the Energy Community Treaty marked the beginning of *the third integration phase of the development of legislation on the use of alternative energy sources (2011–2017)*. It is characterized by the transformation of legislation under the influence of expanding international cooperation to stimulate the energy transition, as well as the adaptation of the national legal framework in the field of alternative energy to the relevant EU legislation.

The priority of alternative energy development for Ukraine stems from its European integration course and international commitments undertaken by the state under the Association Agreement with the EU and a number of ratified international documents regulating modern energy policy. Thus, on 16 September 2014, the Verkhovna Rada of Ukraine ratified the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand⁴⁹. Section 5, Economic and Sectoral Cooperation, of the Association Agreement provides for cooperation between Ukraine and the EU in the energy sector, in particular, in the development and support of renewable energy, taking into account the principles of economic feasibility and environmental protection, as well as in the use of alternative fuels, sustainable biofuel production, and cooperation in the field of regulatory issues, certification and standardization, technological and commercial development.

In addition, Ukraine, as a party to the UN Framework Convention on Climate Change and its Kyoto Protocol, ensures the fulfilment of its obligations under these international agreements. The Paris Agreement, ratified by the Law of Ukraine of 14 July 2016, also provides for the development of Ukraine's economy with due regard to the reduction of greenhouse gas emissions⁵⁰.

In order to further improve the existing legislative mechanisms for introducing a new model of the electricity market and regulating alternative energy, the following laws were adopted "On Amendments to the Law of Ukraine "On Electricity" to Guarantee the State's Obligations to Stimulate

⁴⁹ Про ратифікацію Угоди про асоціацію між Україною, з однієї сторони, та Європейським Союзом, Європейським співтовариством з атомної енергії та їхніми державами-членами, з іншої сторони: Закон України від 16 вересня 2014 року. *Відомості Верховної Ради України*. 2014. № 40. Ст. 2021.

⁵⁰ Про ратифікацію Паризької угоди: Закон України від 14 липня 2016 року. *Відомості Верховної Ради України*. 2016. № 35. Ст. 595.

the Use of Alternative Energy Sources” of 03 June 2011⁵¹ and the Law of Ukraine “On the Principles of Functioning of the Electricity Market of Ukraine” of 24 October 2013⁵². However, with the adoption of the Law “On the Electricity Market”, these legislative acts became invalid.

To implement structural reforms and ensure sustainable development of the fuel and energy sector, the National Commission for State Regulation of Energy was established by a Presidential Decree of 23 November 2011⁵³. The said body carried out state regulation of natural monopolies and business entities operating, inter alia, using non-conventional or renewable energy sources from November 2011 to August 2014. Based on the Presidential Decree of 27 August 2014, the said National Commission was liquidated and the National Commission for State Regulation of Energy and Public Utilities was established instead. Its legal status was enshrined in the Law of Ukraine “On the National Energy and Utilities Regulatory Commission” of 22 September 2016⁵⁴.

Thus, at the third stage, there is a tendency to move from sectoral programmes to strategic programming of alternative energy development. For example, the Cabinet of Ministers of Ukraine approved the Energy Strategy of Ukraine for the period up to 2030 by its Resolution of 24 July 2013⁵⁵. It noted that the development of renewable energy sources in the country in the long term should take into account their potential advantages on the basis of economic competition with traditional sources. The strategy emphasized the need to use support and incentive mechanisms (“green tariff”) in the development of renewable energy sources, as well as to ensure favorable conditions for investment at the legislative level. Despite the importance of these provisions, the Energy Strategy of Ukraine until

⁵¹ Про внесення змін до Закону України “Про електроенергетику” щодо гарантування зобов’язань держави щодо стимулювання використання альтернативних джерел енергії: Закон Україна від 3 червня 2011 року. *Відомості Верховної Ради України*. 2012. № 4. Ст. 12 (втратив чинність)

⁵² Про засади функціонування ринку електричної енергії України: Закон Україна від 24 жовтня 2013 року: *Відомості Верховної Ради України*. 2014. № 22. Ст. 781 (втратив чинність)

⁵³ Про Національну комісію, що здійснює державне регулювання у сфері енергетики: Указ Президента України від 23 листопада 2011 року № 1059/2011. *Офіційний вісник України*. 2011. № 94. Ст. 3413 (втратив чинність)

⁵⁴ Про Національну комісію, що здійснює державне регулювання у сферах енергетики та комунальних послуг: Закон Україна від 22 вересня 2016 року. *Відомості Верховної Ради України*. 2016. № 51. Ст. 833.

⁵⁵ Енергетична стратегія України на період до 2030 року, схвалена розпорядження Кабінету Міністрів України від 24 липня 2013 року № 1071-р. (втратила чинність 18.08 2017 року)

2030 was more like a market assessment than a clear national strategy, including for the development of renewable energy sources.

The Sustainable Development Strategy “Ukraine-2020”, approved by the Presidential Decree of 12 January 2015⁵⁶, established that the main goals of the state policy in the field of energy independence are, in particular, the implementation of projects using alternative energy sources.

The need to further develop the legal regulation of relations in the field of alternative energy, introduce competitive mechanisms for the production of electricity from alternative energy sources, improve the conditions for supporting such production, and increase the investment attractiveness of the construction of renewable energy facilities, led to the allocation of *the fourth – innovative stage of development of legislation in this area (2017-2022)*.

The adoption of the Law of Ukraine “On the Electricity Market” of 13 April 2017 became a prerequisite for the latest structural changes in the Ukrainian electricity sector and the basis for the modernization of the alternative energy sector during this period⁵⁷. In particular, it provided for the possibility of entering into long-term contracts for the purchase of electricity produced under the feed-in tariff until 2030, as well as the conclusion of a power purchase agreement between a guaranteed buyer and a business entity that produces electricity from alternative energy sources and has been eligible for support based on the results of an auction.

In accordance with the Law of Ukraine “On the Electricity Market”, the structural transformation of the Ukrainian electricity market began in 2019, in line with the principles and principles of organizing electricity markets in the EU, adapted for the Contracting Parties to the Energy Community. Of particular importance at this stage was the adoption of the Law of Ukraine “On Amendments to Certain Laws of Ukraine on Ensuring Competitive Conditions for the Production of Electricity from Alternative Energy Sources” of 25 April 2019⁵⁸. In accordance with its provisions, the Law changed the protective conditions for the functioning of alternative energy, namely: it provides for a transition from the feed-in tariff support system to a competitive model of stimulating the development of renewable energy through auctions for the distribution of support (“green” auctions). The procedure for preparing and conducting an auction for the allocation of the

⁵⁶ Про Стратегію сталого розвитку “Україна – 2020”: Указ президента України від 12 січня 2015 року № 5/2015. *Офіційний вісник України*. 2015. № 4. Ст. 67.

⁵⁷ Про ринок електричної енергії: Закон України від 13 квітня 2017 року. *Офіційний вісник України*. 2017. № 49. Ст. 1506.

⁵⁸ Про внесення змін до деяких законів України щодо забезпечення конкурентних умов виробництва електричної енергії з альтернативних джерел енергії: Закон України від 25 квітня 2019 року. *Відомості Верховної Ради України*. 2019. № 23. Ст. 89.

support quota to stimulate electricity producers from alternative sources is determined by the Procedure for conducting auctions for the allocation of the support quota, approved by the Resolution of the Cabinet of Ministers of Ukraine as of 2 August 2022⁵⁹.

Further development of renewable energy was ensured by the adoption of the Law of Ukraine “On Amendments to Certain Laws of Ukraine on Improving the Conditions for Supporting the Production of Electricity from Alternative Energy Sources” of 21 July 2020⁶⁰. Its adoption at the legislative level resolved the urgent problems of the functioning of “green” electricity generation, reducing the financial burden on the final price of electricity by optimizing the level of the “green” tariff, and achieving a balance of interests of society, consumers and electricity market participants.

A significant event for the development of alternative energy, which marked the transition to a new ideological basis for energy production and use, was the adoption of the Law of Ukraine “On Energy Efficiency” on 21 October 2021⁶¹. The provisions of the Law are aimed at regulating relations arising in the field of energy efficiency and are aimed at strengthening energy security, reducing energy poverty, sustainable economic development, conservation of primary energy resources and reduction of greenhouse gas emissions.

The adoption by the Parliament of Ukraine of the Law “On Amendments to Certain Laws of Ukraine on the Development of Biomethane Production” of 21 October 2021 was important for the development of the biomethane industry in Ukraine⁶², which establishes the legal framework for the development of the biomethane market in Ukraine and its export through the use of a biomethane register.

The fourth stage is characterized by a change in the strategic guidelines for the development of alternative energy based on the adoption of a number of important policy documents. In particular, the long-term Energy Strategy of Ukraine for the period up to 2035 “Security, Energy Efficiency,

⁵⁹ Про запровадження конкурентних умов стимулювання виробництва електричної енергії з альтернативних джерел енергії: постанова Кабінету Міністрів України від 27 грудня 2019 року № 1175 (в ред. постанови Кабінету Міністрів України від 2 серпня 2022 р. № 889). *Офіційний вісник України*. 2022. № 66. Ст. 3967.

⁶⁰ Про внесення змін до деяких законів України щодо удосконалення умов підтримки виробництва електричної енергії з альтернативних джерел енергії: Закон України від 21 липня 2020 року. *Офіційний вісник України*. 2020. № 63. Ст. 2027.

⁶¹ Про енергетичну ефективність: Закону України від 21 жовтня 2021 року. *Офіційний вісник України*. 2021. № 89. Ст. 5745.

⁶² Про внесення змін до деяких законів України щодо розвитку виробництва біометану: Закон України від 21 жовтня 2021 року. *Офіційний вісник України*. 2021. № 88. Ст. 5604.

Competitiveness,” approved by the Government of Ukraine on 18 August 2017⁶³. At the same time, the previous Energy Strategy of Ukraine until 2030 was repealed. A positive milestone of the newest strategy was the consideration of the prospects for growth in electricity production from renewable energy sources based on solid biomass and biogas, solar and wind energy. Important programme acts of the fourth stage also include the Concept for the Implementation of the State Policy in the Field of Heat Supply, approved by the Government of Ukraine on 18 August 2017⁶⁴.

Comprehensive development of renewable energy sources, improvement of energy efficiency, implementation with the European Green Deal initiative are among the key guidelines in Ukraine’s economic policy and strategic goals of ensuring the country’s energy security, in accordance with the National Economic Strategy of Ukraine for the period up to 2030, approved by the Government of Ukraine on 3 March 2021⁶⁵ and the Energy Security Strategy approved by the Government of Ukraine on 4 August 2021⁶⁶.

At the end of 2021, Ukraine, within the framework of the Treaty establishing the Energy Community (by the decision of the Energy Community Ministerial Council of 30.11. 2021 No. 2021/14/MS-EPS), Ukraine committed to implement the fourth energy package “Clean Energy for Europeans” (covering EU legislation on energy efficiency, renewable energy sources, governance, electricity market design, and security of electricity supply rules), which includes Directive (EC) 2018/2001 of 11 December 2018 on the promotion of the use of energy from renewable sources.

The adoption of the Law of Ukraine “On Amendments to Certain Laws of Ukraine on the Development of Energy Storage Facilities” dated 15 February 2022 should be considered positive for the further development

⁶³ Про схвалення Енергетичної стратегії України на період до 2035 року “Безпека, енергоефективність, конкурентоспроможність”: Розпорядження Кабінету Міністрів України від 18 серпня 2017 року № 605-р. *Урядовий кур’єр* від 08 вересня 2017 року № 167. (втратила чинність 21.04.2023 року)

⁶⁴ Про схвалення Концепції реалізації державної політики у сфері теплопостачання: Розпорядження Кабінету Міністрів України від 18 серпня 2017 року № 569-р. *Офіційний вісник України*. 2017. № 70. Ст. 2127.

⁶⁵ Про затвердження Національної економічної стратегії на період до 2030 року: Постанова Кабінету Міністрів України від 3 березня 2021 року № 179. *Офіційний вісник України*. 2021. № 22. Ст. 1015.

⁶⁶ Про схвалення Стратегії енергетичної безпеки: Розпорядження Кабінету Міністрів України від 4 серпня 2021 року № 907-р. *Офіційний вісник України*. 2021. № 64. Ст. 4071.

of the renewable energy sector⁶⁷. Its provisions are aimed at ensuring the use of energy storage systems, balancing the operation of the power system, and increasing the stability of electricity supply to consumers. The law provides for the creation of a new participant in the electricity market – an energy storage operator. It regulates the licensing of energy storage activities, the possibility of using energy storage systems by consumers and electricity producers, including those from renewable energy sources.

The implementation of all the above decisions aimed at significantly improving the business climate in the alternative energy sector and creating new opportunities to increase the sector's capacity was suspended and slowed down on 24 February 2022 due to the full-scale invasion of Ukraine by the Russian Federation. The introduction of a special legal regime of martial law throughout the country has undoubtedly affected the legislation in the field of alternative energy. Therefore, it is appropriate to highlight *the fifth stage of development of legislation on the use of alternative energy sources under martial law (from 2022 to the present time)*.

The permanent damage to a large part of the country's energy infrastructure as a result of hostilities has led to a reduction in renewable generation, a deepening financial crisis in the alternative energy market, the suspension of wind farm construction, and a limitation of payments under the feed-in tariff for the period of martial law.

Important political and legal decisions made during the war that were significant for the development of renewable energy sources in Ukraine include connection of the energy systems of Ukraine and Moldova with the energy system of Continental Europe (ENTSO-E) (16 March 2022); approval by the European Commission plan (18 May 2022); granting Ukraine the status of an EU candidate country (23 June 2022); signing of the Joint Declaration of Association between Ukraine and the International Energy Agency (IEA) (19 July 2022); ratification of the Agreement between Ukraine and the European Union on Ukraine's participation in the EU LIFE Programme – Environment and Climate Action Programme (20 September 2022); accession of the State Agency on Energy Efficiency and Energy Saving of Ukraine to the European Clean Hydrogen Alliance (23 September 2022); presentation of the National Recovery Plan of Ukraine prepared by the Government of Ukraine and presented at the Ukraine Recovery Conference (Lugano, Switzerland, 4-5 July 2022), etc ⁶⁸.

⁶⁷ Про внесення змін до деяких законів України щодо розвитку установок зберігання енергії: Закон України від 15 лютого 2022 року. *Офіційний вісник України*. 2022. № 33. Ст. 1716.

⁶⁸ Україна та Європейський зелений курс. Річний моніторинговий звіт. 2022 рік. URL: <https://dixigroup.org/analytic-cat/zvity/>

Extremely important events were the conclusion of a Memorandum of Understanding on the establishment of a partnership in the field of energy transition and renewable energy sources between the Ministry of Energy of Ukraine and the Federal Ministry for Climate, Environment, Energy, Mobility, Innovation and Technology of the Republic of Austria (01 February 2023) and the signing of a Memorandum between the Government of Ukraine and the European Commission on a strategic partnership in the fields of biomethane, hydrogen and other synthetic gases (03 February 2023)⁶⁹. It is the agreed and coordinated work with the EU that is the driving force for carrying out effective reforms in the field of energy and on the way to the full integration of the energy markets of Ukraine with the EU markets.

In connection with the need for further development of legal regulation of relations in the field of alternative energy under martial law, in particular, sale of alternative energy on free markets, resolution of the situation with high bills for imbalances of producers of energy from alternative sources, adoption of licensing conditions for carrying out storage business activities energy, the development of the biomethane market, the improvement of the procedure for conducting auctions in alternative energy, a number of regulatory and legal acts were adopted⁷⁰.

In particular, on July 29, 2022, the Laws of Ukraine were adopted: “On the peculiarities of regulating relations on the natural gas market and in the field of heat supply during the period of martial law and the subsequent restoration of their functioning”⁷¹ and “On Amendments to Chapter XX ”Transitional Provisions” of the Tax Code of Ukraine on Ensuring Stable Functioning of the Natural Gas Market During Martial Law and Subsequent Recovery”⁷².

⁶⁹ Україна та Європейський зелений курс. Квартальний огляд № 5 (січень-березень 2023 року). URL: https://dixigroup.org/wp-content/uploads/2023/04/2023_q5_egdmonitor_ua.pdf

⁷⁰ Платонова Є. О. Тенденції правового регулювання альтернативної енергетики України в умовах війни. *Приватне право в умовах війни* : матеріали всеукр. наук. конф. (Одеса, 15 листоп. 2022 р.) / за заг. ред.: д.ю.н., проф. Є. Харитоновна, д.ю.н., проф. І. Давидової; НУ “Одеська юридична академія. – Одеса, 2022. С. 873-876.

⁷¹ Про особливості регулювання відносин на ринку природного газу та у сфері теплопостачання під час дії воєнного стану та подальшого відновлення їх функціонування: Закон України від 29 липня 2022 року. *Офіційний вісник України*. 2022. № 68. Ст. 4070.

⁷² Про внесення змін до розділу XX “Перехідні положення” Податкового кодексу України щодо забезпечення стабільного функціонування ринку природного газу протягом дії воєнного стану та подальшого відновлення: Закон України від 29 липня 2022 року. *Офіційний вісник України*. 2022. № 68. Ст. 4071.

A significant step for the development of the biomethane market was the adoption by the Government of Ukraine of the resolution “On approving the operation of the biomethane register” dated July 22, 2022⁷³. With the aim of approving the licensing conditions for conducting energy storage business activities and to resolve the situation with high bills for imbalances of energy producers from alternative sources, a number of resolutions of the NCRECP were adopted: “On Approval of the Licensing Conditions for Conducting Energy Storage Business Activities”⁷⁴ and “On approval of changes to the Procedure for purchase by a guaranteed buyer of electric energy produced from alternative energy sources”⁷⁵.

On April 21, 2023, the Government of Ukraine decided to approve the Energy Strategy of Ukraine for the period until 2050⁷⁶, which should reflect the goals of the European Green Deal (Green Deal) and be based on the principles of an integrated approach to the formation and implementation of energy policy, creating conditions for the sustainable development of Ukraine’s economy. The corresponding goals will be achieved through the development of comprehensive use of renewable energy sources, modern and safe nuclear generation, modernization and automation of transmission and distribution systems. The strategy envisages Ukraine achieving carbon neutrality in the energy sector by 2050. At the same time, the previous Energy Strategy of Ukraine for the period until 2035 “Security, Energy Efficiency, Competitiveness” from 2017 became invalid.

In addition, Ukraine and the EU began discussing the National Energy and Climate Plan (NECP), which will be necessary to implement for the integration of our country into the EU. The Ministry of Energy of Ukraine, with the involvement of international experts, prepared a draft of the National Energy and Climate Plan of Ukraine until 2030. Currently, the Action Plan for post-war reconstruction and development of Ukraine for the implementation of the Energy Strategy until 2050 is being finalized. It is

⁷³ Про затвердження функціонування реєстру біометану: постанова Кабінетом Міністрів України від 22 липня 2022 року № 823. *Офіційний вісник України*. 2022. № 61. Ст. 3652.

⁷⁴ Про затвердження Ліцензійних умов провадження господарської діяльності зі зберігання енергії: постанова НКРЕКП від 22 липня 2022 року № 798. URL: <https://zakon.rada.gov.ua/rada/main/b209>

⁷⁵ Про затвердження змін до Порядку купівлі гарантованим покупцем електричної енергії, виробленої з альтернативних джерел енергії: постанова НКРЕКП від 26 липня 2022 року № 821. URL: <https://zakon.rada.gov.ua/rada/main/b209>

⁷⁶ Про схвалення Енергетичної стратегії України на період до 2050 року: Розпорядження Кабінету Міністрів України від 21 квітня 2023 року № 373-р. *Офіційний вісник України*. 2023. № 47. Ст. 2575.

these two documents that should become part of the country's post-war reconstruction⁷⁷.

On May 3, 2023, the President of Ukraine signed the Law, which provides for changes to the Budget Code of Ukraine and the introduction of the State Fund for Decarbonization and Energy-Efficient Transformation⁷⁸. In connection with the understanding of the need to reform the energy legislation, increase its protection and ensure the stable operation of the domestic energy system in the conditions of war and post-war reconstruction, the Parliament of Ukraine on June 30, 2023 adopted in the second reading the draft Law of Ukraine on Amendments to Certain Laws of Ukraine on the Restoration and green transformation of the energy system of Ukraine⁷⁹.

In modern conditions, the legislation in the field of alternative energy in Ukraine is at the stage of reform, the path of which is chosen taking into account the importance of ensuring the sustainable development of energy production from alternative sources, as a key tool for guaranteeing the energy independence of the state, taking into account all the challenges of the war and post-war times, international obligations and environmental transformations in the world.

1.3. The current state of legislative support for the use of alternative energy sources in Ukraine

According to the above-mentioned periodization of the development of national legislation in the field of alternative energy, it is possible to trace a pronounced tendency to speed up and deepen rule-making. This directly affects the state of both general energy legislation and individual components of the latter (such as legal support for alternative energy).

The following are characteristic features of modern legislative support for the functioning of alternative energy in Ukraine:

1) *reforming energy legislation*. This process, initiated by the adoption of the new Law of Ukraine "On the Electricity Market"⁸⁰, directly related to the development of alternative energy in the state. Already at the integration stage (2011-2017) of the development of the legislation, the critical

⁷⁷ Офіційний сайт Міністерства економіки України. URL: <https://www.me.gov.ua/?lang=uk-UA>

⁷⁸ Урядовий портал. Єдиний веб-портал органів виконавчої влади України. URL: <https://www.kmu.gov.ua/timeline?&type=posts&from=03.05.2023&till=03.05.2023>

⁷⁹ Офіційний веб-портал Верховної Ради України. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=76021

⁸⁰ Про ринок електричної енергії: Закон України від 13 квітня 2017 року. *Відомості Верховної Ради*. 2017. № 27-28. Ст. 312.

inconsistency of the previous legislation, which preserved the traditional model of the energy market, with the needs of alternative energy became evident. On the one hand, the rapid development of “green” generation served as one of the main factors that catalyzed the restructuring of the old energy system, whose centralized and monopolized model did not meet modern requirements and was not able to meet the needs of alternative energy. On the other hand, the change in the model of the energy market stimulated even more rapid development of alternative energy in Ukraine;

2) *combination of both economic and environmental aspects.* Economic growth largely depends on the level of development of the country’s energy sector, which is the basis for the functioning of all sectors of the economy. One of the most effective ways is the development of alternative types of energy, which will make it possible to ensure energy independence from external economic and political factors. In turn, alternative energy is exactly that type of energy, which is characterized by inexhaustibility, autonomy, economy and safety for the environment;

3) *the combination of the imperative-dispositive character of legal acts.* The imperative character is manifested, first of all, in the clearly established competences and duties of the subjects of legal prescriptions, both state authorities and legal entities. Despite the importance of state regulation in the field of alternative energy, contractual regulation is gaining importance as an independent legal method of organizing specific individual relationships of economic entities, which exists alongside their regulatory and legal regulation, which justifies their dispositive nature;

4) *the absence of a clear system of legislation in the field of alternative energy.* This is an extremely negative factor, since the absence of a well-thought-out and scientifically based system of legislation reduces the effectiveness and quality of legal regulation of relevant social relations. In addition, the majority of normative legal acts in the field of alternative energy are constantly changing and are purely declarative in nature, and in some cases even worsen the situation of producers of alternative energy. It should be noted that the rule-maker misses a rather convenient moment for systematization actions, since it was during the changes experienced by modern energy legislation that systematization would take place in the easiest and relatively painless way. At the same time, the systematization of legislation in the field of alternative energy should take place taking into account the system of general energy legislation. In addition, the lack of a coordinated, theoretically grounded and holistic approach to the process of improving the legislation does not make it possible to establish an orderly, consistent and balanced state policy;

5) *significant degree of dynamism of legislation.* During 2017–2023, both general energy legislation and special legislation in the field of

alternative energy are in a state of permanent change. Changes are made to the main energy laws on average every six months, which modify the regulatory environment. Sub-legislative legal regulation is especially actively changing. All these manifestations are a fairly typical consequence of the energy reform, which entails the ongoing turbulence of the regulatory environment. However, at the same time, a characteristic feature of such dynamic legislation should be the fact that the lawmaker makes the relevant changes not as a result of strategic foresight, but as a hasty and, as a rule, belated reaction to events and changes in social relations that have already taken place;

6) *reduction of the protectionism of the legislation*, which had two main waves associated with the state-financial collapse and martial law.

The first wave occurred during 2020, when legislation in the field of alternative energy experienced a significant decline in its protectionism. First of all, the legal basis for setting the “green” tariff was drastically changed, which was the result of the inability of the state, in the person of the Guaranteed Buyer, to settle with producers of energy from alternative sources in time and in full. The main problem with this step is that the rules regarding “green” tariffs were changed not only prospectively, but also retrospectively – that is, “green” tariffs were also reduced for those manufacturers already operating in the market. Secondly, constitutional submission No. 3/332(20) dated July 17, 2020, was a significant blow to the protectionism of legislation in the field of alternative energy. In accordance with it, a group of Deputies asks to recognize as unconstitutional the provisions of the first – fourth paragraphs of the second part, the third part, the sixth – ninth parts, the twelfth – twenty-second parts, the twenty-sixth part, the twenty-eighth part – the thirty-third article 9-1, the provisions of article 9-2 of the Law of Ukraine “On Alternative Energy Sources” dated February 20, 2003, the provisions of parts two, four, paragraph 3 of part nine of Article 65 of the Law of Ukraine “On the Electric Energy Market” dated April 13, 2017. In this submission, it is noted that the provisions of the first – fourth paragraphs of the second part, the third part, the sixth – ninth parts, the twentieth – twenty-second parts, the twenty-sixth part, the twenty-eighth – thirty-third parts of Article 9-1 and the provisions of Article 9-2 The content of Part 3 of Article 42 of the Constitution of Ukraine regarding the state’s duty to ensure competition in business activity does not correspond to the law. Unequal conditions are established for all subjects that produce electricity in Ukraine, in particular, for those that produce electricity from alternative sources, the introduction of the “green” tariff establishes advantages that producers of other types of electricity do not have. In addition, the provisions of part two – thirty-three of Article 9-1 also establish unequal conditions for obtaining a “green” tariff among the

entities themselves that produce electricity from alternative sources (depending on the type of electricity facility, the date of its commissioning, etc. set different amounts and terms of compensation under the “green” tariff).

Although the decision on this issue has not yet been made, the very fact of the existence of this submission undermines the policy of protectionism in the field of alternative energy. Recognizing the relevant provisions of the legislation in the field of alternative energy as unconstitutional will entail a whole series of negative consequences for Ukraine (even more image losses, a decrease in investment attractiveness, a significant number of lawsuits before international commercial arbitrations, a decline in the development of the industry, loss of assets acquired as a result of the energy reform, stopping energy transition and implementation of sustainable development goals, etc.).

7) *“programmatic” character of legislation in the field of alternative energy.* Nowadays, Ukraine is on the way to choosing the next vector of development of the national energy system. In recent years, there has been an awareness of the significant importance of alternative energy sources for social life and the functioning of the state. This is particularly well illustrated by statistical data on the amount of destruction caused by military actions: in general, about 30% of solar generation and more than 90% of wind generation have been destroyed or are in the occupied territories⁸¹. Certainly, these losses cause a forced regression in the development of the country’s energy system, especially in the direction of achieving sustainability. Currently, there are attempts to compensate for these losses to some extent due to the intensity of rulemaking. This creates a state of increased “programmatic” legislation. This feature of modern legislation in the field of alternative energy is confirmed by the analysis of the nature of rule-making in the last two years. In particular, the National Economic Strategy of Ukraine for the period until 2030, approved by the resolution of the Government of Ukraine dated March 3, 2021, defines one of the key guidelines in the economic policy of Ukraine to be the decarbonization of the economy (increasing energy efficiency, development of renewable energy sources, development of the circular economy and synchronization with the initiative “European Green Course”)⁸². The Energy Security Strategy of Ukraine, approved by the order of the Government of Ukraine

⁸¹ Проект Плану відновлення України. Матеріали робочої групи “Енергетична безпека”. 2022. URL: <https://www.kmu.gov.ua/storage/app/sites/1/recoveryrada/ua/energy-security.pdf>

⁸² Про затвердження Національної економічної стратегії на період до 2030 року: постанова Кабінету Міністрів України від 3 березня 2021 р. № 179. *Офіційний вісник України*. 2021. № 22. Ст. 1015.

dated August 4, 2021, defines the strategic goals of ensuring the energy security of the state and the tasks to achieve them: stimulation of import substitution, in particular through the development of bioenergy, wind energy, justified increase in the production of energy resources; implementation of a set of measures to expand the use of local alternative fuels; development of a set of measures for the integration of consumers using renewable energy sources for their own consumption into the work of the United Energy System of Ukraine; implementing a justified increase in the share of renewable energy sources, taking into account the requirements for ensuring the operational security of energy supply systems and the impact on the price parameters of the energy market, etc.⁸³.

The draft order of the Government of Ukraine “On the National Action Plan for the Development of Renewable Energy for the Period Until 2030” is posted on the official website of the State Agency for Energy Efficiency and Energy Saving of Ukraine⁸⁴. It contains indicative goals for the development of renewable energy and measures of a legal and organizational nature are determined, the implementation of which will create the basis for achieving the specified goals. Another example: the order of the Government dated April 21, 2023 “On the approval of the Energy Strategy of Ukraine for the period until 2050”⁸⁵, that cancels the decree dated August 18, 2017 “On the approval of the Energy Strategy of Ukraine for the period until 2035 “Safety, energy efficiency, competitiveness” and establishes the need for the Ministry of Energy, together with other central bodies of the executive power, to ensure, within a three-month period, the development of a plan of measures for implementation Energy strategy of Ukraine for the period until 2050.

The main feature of these regulatory and legal acts of a program nature is the desire to reform the energy sector, further development of the use of alternative energy sources, and adaptation of Ukrainian legislation to EU legislation. A key element of successful European integration is achieving a certain level of consistency of Ukrainian legislation with the modern European legal system or bringing Ukrainian legislation into line with EU law standards. This can be possible by improving the existing legislation,

⁸³ Про схвалення Стратегії енергетичної безпеки: розпорядження Кабінету Міністрів України від 04 серпня 2021 р. № 907-р. *Офіційний вісник України*. 2021. № 64. Ст. 4071.

⁸⁴ Проект розпорядження Кабінету Міністрів України “Про Національний план дій з розвитку відновлюваної енергетики на період до 2030 року”. URL: <https://saee.gov.ua/uk/content/elektronni-consultatsii>.

⁸⁵ Про схвалення Енергетичної стратегії України на період до 2050 року: розпорядження Кабінету Міністрів України від 21 квітня 2023 року. *Офіційний вісник України*. 2023. № 47. ст. 2575.

developing projects and adopting normative legal acts and fulfilling Ukraine's international legal obligations in the field of European integration;

8) *unregulated use of certain types of alternative energy sources*. The main alternative sources of energy in Ukraine are wind energy, solar energy and water energy. However, there are other types of alternative energy sources that are very widely used in the world, but have not yet found proper application and legal regulation in the legislation of Ukraine. In particular, it is told about such types of energy as aerothermal, geothermal, hydrothermal. The legal regulation of these types of energy is fragmentarily contained in the Law of Ukraine "On Alternative Energy Sources" dated February 20, 2003, which provides their definition and some provisions on the peculiarities of the legal regulation of their use, but this is not sufficient for the proper introduction of these types of energy into the country's energy sector.