Outline

- Timeline of legislation for energy markets and financial markets/instruments law in Ukraine
- How we did it in Ukraine in the legislative process
- Financial Regulator & Energy Regulator: Rivals or Partners?
Two Sides of a Coin

○ Why energy derivatives are beneficial in general and in Ukraine in particular?

○ We need to understand the price for the future. Electricity spot price is hourly, but fluctuates as market is rather immature. Gas spot price is “borrowed” from European jurisdictions;
○ There are no price risk hedging instruments available
○ Advanced settlement mechanism need to be introduced to increase liquidity and decrease transactional costs of market participants

○ But
○ Electricity & Gas can hardly be equal in regulatory treatment with other tradable commodities
○ Markets operate under many restrictions: price caps in electricity, PSOs in both gas & electricity, the latter offering price to end-users far below total cost of service, non paying consumers, debts.
○ Though nicknamed “derivatives law”, the draft FinMarketsLaw 2284 clearly intended to regulate commodities trading, incl. electricity & gas
Problems & Complications

- Overlapping regulation resulting from FinMarkets draft law “2284”
  - Licensing of Market Operators
  - Market Rules
  - Market Oversight
  - Penalties

- MIFID & REMIT not Implemented. No evolutionary development like in Europe.

- No business process for cooperation/information exchange in place

- Antimonopoly Committee, 3rd regulator, has to “join the game”
Solution 1: a set of “carve outs”

Sphere of the Financial Markets Law excludes

- TSOs Gas & Electricity
- DAM Operator Electricity
- Electricity & Gas & Heating markets functioning
- Reference to specialized laws

Financial Instruments exclude

- Deliverable options, futures, swaps, forwards and other derivatives with commodity being underlaying asset to which a party is gas or electricity TSO or concluded for physical balancing of supply and demand, incl. ancillary services
- Commodity based forward contracts with physical delivery
- Derivative contracts concluded at OTF or organized market, the subject of which is sale & purchase of electricity & gas, transmission, distribution, supply

Wholesale Energy Products defined as

- Sale & purchase agreements for electricity and gas with delivery in Ukraine
- Derivative contacts for electricity & gas produced, supplied or traded in Ukraine or EnC
- Contracts for transportation of electricity & gas & their derivatives
- Contracts for electricity or gas supply and distribution to large end-users, threshold established by NEURC
Solution 2: Legislatively Mandated Cooperation & Information Exchange

- Energy Regulator
- Financial Regulator
- Anti-Monopoly Committee

MOU
Information Exchange
Data Protection
Solution 3: Strengthening/Clarification of NEURC Authority

- **Changes to Criminal Code**
  - REMIT based definition of manipulation in the energy market. Definition, penalties, size of damage, severe damage, illegal disclosure of insider information

- **Changes to Commercial Code**
  - Legal basis, organization of sale & purchase and settlements in the electricity and gas markets, to be carried out according to sectoral laws

- **Changes to Electricity Market Law**
  - Special features of implementing clearing at electricity and gas markets to be decided by the Energy Regulator
Thank you & stay healthy!