



## DRC / DDG LEGAL ALERT: Issue 38 March 2019

### 1. Housing Utility Subsidies Will Be Provided To Individuals Directly And In Cash

**Background:** As [provided](#) by the State Statistics Service, in 2018 approximately 7.5 million households applied for housing utility subsidies.<sup>1</sup> In February 2019 the [average size](#) of the subsidy constituted approximately 1 000 UAH. Since the subsidies were introduced, they have not been provided to individuals directly: instead, they have been allocated to providers of the utilities while individuals' fees were deducted based on the size of the subsidy.

On 9 November 2017 the Parliament adopted [Law No. 2189](#) providing that, starting from 2019 housing utility subsidies will be provided to individuals directly in cash. On 27 December 2018 the Cabinet issued [Resolution No. 1176](#) to provide a mechanism required by the law. The mechanism prescribes that transition from non-direct to direct allocation of subsidies will take place in three stages, to be completed within 2019. From 1 March 2019 the housing utility subsidy will be provided in cash directly to individuals that were granted the subsidy before 31 December 2018.

*New Mechanism for Housing Utility Subsidy ('direct cash subsidy'):*

#### Non-pensioners:

- i) for the first time, non-pensioners can receive their subsidy in cash at any 'Oschadbank' institution starting from 12 March 2019. Identification and individual taxpayer's certificate are required;
- ii) during the first visit, non-pensioners will be offered a banking card connected with a new or existing 'Oschadbank' account. In future, the subsidy will be allocated to this bank account.

#### Pensioners:

pensioners will receive the 'cash subsidy' with their pension payment – regardless whether they receive it through a bank (at the bank office or through a card) or by post (at a post office or delivered to their home if the person is in proven need of external assistance).

If an individual has an unpaid debt for a utility by the end of a subsidy period, the subsidy will not be automatically prolonged for the next period. Individuals may reapply for the subsidy, after full repayment of the respective debt.

### 2. Administrative Court Has Recognised Unlawful Procedure For Movement of Goods Across The Contact Line

**Background:** As a result of the conflict in the East of Ukraine and the inability of the government to re-establish control over the Ukrainian state border with Russia, the government has de-facto limited the freedom of movement of persons and goods across the contact line. For instance, on 1 March 2017 the Cabinet has issued [Resolution No. 99](#) introducing the procedure of movement of goods across the contact line. Due to the Resolution, only goods specified within a specific list can be transferred by individuals across the contact line. Even the allowed items could only be transported subject to weight and value limitations. Both the list of allowed items and respective limits were provided within the [Order of Minister of TOT No. 39](#) dated 24 March 2017. Many items within the order which constitute no threat to the national interests of Ukraine were omitted from the list for technical and other reasons.

An IDP brought both the Cabinet Resolution and the Ministerial Order to Kyiv District Administrative Court with a claim to recognise them unlawful. In June 2018 the court opened a case on the complaint.

<sup>1</sup> The utility subsidy is provided for utility payments including natural gas, water & electricity supply. It is worth noticing that IDPs who rent housing can apply for the subsidy submitting a dweller's declaration instead of the copy of the rental contract which they are often refused to formalise by the landlord.

**Position of the court:** On 27 February 2019 the court has delivered its [decision](#) in the case. The court recognised the provision of the Cabinet’s Resolution - referring to the exclusive list of allowed items (Article 9) to be unlawful and cancelled the Ministerial Order which established the list. Within the decision the court stated the following:

- ✓ provisions of both the acts significantly limit freedom of movement of individuals crossing the contact line, violating Ukrainian Constitution and the European Convention on Human Rights
- ✓ the government failed to prove that the limitation is grounded on public interests including those of national security

Please note that apart from Article 9, the Cabinet Resolution remains in force. In other terms, the procedure for crossing the contact line remains in force apart from the limitation on movement of goods by individuals. This does not concern goods transported for commercial reasons – their transportation is still governed by the restrictive provisions of the Resolution and other legislation.

**On the possibility of the appeal:** On 29 March 2019 the decision came in force as it was not appealed by the government within 30 days. As of 22 April 2019 the decision has not been appealed. However, the government quite often misses the term and courts tends to prolong it upon the submission of the appeal.

### 3. [The Cabinet Introduces Additional Social Benefits For Big Families To Promote Population Growth](#)

On 13 March 2019 the Cabinet adopted [Resolution No. 250](#). The Resolution introduces a new kind of monthly social benefit addressing families with three or more children (‘big families’). The benefits are available starting from 1 April 2019 on the following terms:

#### *Terms of Newly Introduced Social Benefits for Big Families*

<u>Size and duration of the benefits</u>	<u>Eligibility</u>
<ul style="list-style-type: none"> <li>• 1 700 UAH per child under 6 years old to be paid on a monthly basis;</li> <li>• provided until the month when the child turns 6 years;</li> <li>• can be received through a bank transfer, at a post office or delivered directly to person’s house in cases where the person is in need of external care</li> </ul>	<ul style="list-style-type: none"> <li>• available for families with a registered marriage or single parents with three or more children regardless their income;</li> <li>• can be provided to either parent on the condition that the parent permanently resides with the children;</li> <li>• addresses big families with both newly born children and children who were born before the start of the programme but have not reached 6 years.</li> </ul>
<u>Application procedure</u>	<u>Benefits suspension</u>
<ul style="list-style-type: none"> <li>• one of the parents personally files the application to local department of social protection within her/his permanent residence area;</li> <li>• the application has to include copies of birth certificate of all the children and so-called ‘big family’ certificate;</li> <li>• the department of social protection considers the application within 10 days and informs the applicant on the decision within additional 5 days.</li> </ul>	<ul style="list-style-type: none"> <li>• non-fulfilment of parental duty of care over the child for whom the benefits were granted. This includes non-fulfilment for the reasons of termination of parental rights and imprisonment of the assistance receiver;</li> <li>• use of the funds for purposes not related to raising of the child;</li> <li>• death of the child or the parent receiving the assistance. If there are still 3 or more children within the family after the death the benefits will be reduced. In case of death of the parent who was prescribed with the benefits, the other parent will have to re-apply to receive them.</li> </ul>

The newly introduced benefits are part of the state programme promoting birth rate growth.<sup>2</sup> Other similar assistance includes general assistance on child birth,<sup>3</sup> material assistance in the form of ‘baby box’<sup>4</sup> to be provided after the birth of a child, and a ‘municipal babysitter’ pilot project making parents eligible for reimbursement of costs of hiring a babysitter.<sup>5</sup> All of the aforementioned assistance can be obtained simultaneously.

#### **4. The Cabinet Issues By-Law On Register of Domestic and Gender-Based Violence Cases**

On 20 March 2019 the Cabinet has issued [Resolution No. 234](#) adopting procedures for the operationalisation of a state register of cases of domestic and gender-based violence.

Significant provisions:

- Ministry of social policy will be responsible for the development and maintenance of the register;
- Personal data of the survivor of the violence or the reporting person could be included on the register only on the basis of consent of the person or consent of his/her representative;
- Refusal of the person to include their data in the register cannot be considered as a ground for denying relevant social assistance to the violence survivor.

#### **5. Law on Register of Veterans Comes Into Force**

On 1 March 2019 [Law No 2684](#) on Register of Veterans came into force. The Law prescribes creation of the state register of veterans to facilitate their social protection. Operationalisation of the law still requires adoption of respective procedures.

#### **6. State Construction Standard On Inclusiveness Of Buildings and Structures Towards Persons With Limited Mobility Comes Into Force**

Starting from 1 April 2019, the state construction [standard](#) ‘Inclusiveness of buildings and structures’ comes into force. The standard provides that *all* the new housing, public buildings, and structures have comply with the principle of universal design<sup>6</sup> concerning accessibility of buildings and structures for persons with limited mobility.

According to the State Statistics Service, as of the start of 2018, [there are](#) over 2.6 million persons with disabilities in Ukraine. In 2017, nearly 100,000 persons with disabilities attended educational institutions.

<sup>2</sup> According to the [State Statistical Service](#), as of 1 January 1993 the population of Ukraine was over 52 million people. After 1993 the population size has steadily decreased to 45.4 million by 1 January 2014. As of 1 January 2018, the population of the state is approximately 42 million – however, this number does not include residents of the Crimea. It is also unclear whether the statistics service managed to include population of the NGCA in the East of Ukraine.

<sup>3</sup> The state assistance on the birth of a child is provided under the Law No. 2811 dated 21.11.1992. The assistance on the birth of a child includes one-time payment in the size of 10 320 UAH and further monthly assistance in the size of 860 UAH to be paid over the following 36 months (41 280 UAH in total).

<sup>4</sup> For more information about the ‘baby box’ initiative please see [DRC-DDG Legal Alert Issue 27](#): June 2018, Section 3.

<sup>5</sup> For more information about the ‘municipal babysitter’ pilot project please see [DRC-DDG Legal Alert Issue 27](#): June 2018, Section 3.

<sup>6</sup> Universal design is the design of buildings, products or environments dedicated to make them accessible to all people, regardless of age, health status or other factors.

## **7. The Cabinet Continues To Expand The List Of Construction Works Which Do Not Require Reconstruction Permits**

In the January 2019 issue of the [Legal Alert](#) DRC-DDG reported the expansion of the list of construction works which do not require obtaining permission from the state. On 20 March 2019 the Cabinet issued [Resolution No. 236](#), expanding the list once again.

Now, it also includes refurbishment and redesign of housing and premises of CC1, CC2, and CC3 levels of complexity.<sup>7</sup>

As the requirement to obtain the permission also leads to a duty to report the works after they are completed and pass the recommissioning process, the Resolution is an additional key step towards simplification of the complex regulation over construction in Ukraine.

*Some terminology used in this issue of the Alert are taken from the draft laws or current legislation and do not necessarily reflect the position of DRC-DDG.*

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<sup>7</sup> Ukrainian regulation differentiates constructions on a number of criteria. One of them is the potential risk level criteria which includes three groups: CC-1 (the lowest potential risk), CC-2 (average potential risk), and CC-3 (high potential risk). Constructions are included to one of the potential risk groups based on the 1) number of people whose life and health might be endangered because of the construction; 2) amount of potential economic damages; 3) potential damage to the cultural heritage; 4) potential threat to functioning of infrastructure. Relating to the Ukrainian humanitarian context, most of the individual houses, farming buildings, and outbuilding structures usually belong to the lowest risk group, CC1.